



California Regulatory Notice Register

REGISTER 2007, NO. 17-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

APRIL 27, 2007

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Thomson West and is offered by subscription for \$202.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. “Periodicals Postage Paid in Saint Paul, MN.” **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Thomson-West/Barclays, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

**PROPOSED ACTION ON
REGULATIONS**

Information contained in this document is published as received from agencies and is not edited by Thomson West.

**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest code of the following:

**CSAC EXCESS INSURANCE AUTHORITY
PAJARO VALLEY WATER
MANAGEMENT AGENCY**

A written comment period has been established commencing on **April 27, 2007** and closing on **June 11, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention Tara Stock, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code will be submitted to the Commission's Executive Director for his review; unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code, proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code. Any written comments

must be received no later than **June 11, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS
AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Tara Stock, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED
CONFLICT OF INTEREST CODES**

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Tara Stock, Fair Political Practices

Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

ADOPTION

STATE AGENCY: Northern California Gas
Authority Number 1

AMENDMENT

MULTI-COUNTY: Desert Community College
District
Santa Maria Joint Union High
School District
Shandon Joint Union High
School District

A written comment period has been established commencing on **April 27, 2007**, and closing on **June 11, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **June 11, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respec-

tive agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

ARTICLE 6.1. Organic Certification Appeals Process

(Notice published April 27, 2007)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to adopt Article 2.1., Sections 1391 and 1391.1, of the regulations in Title 3 of the California Code of Regulations pertaining to organic certification appeals and mediation.

PUBLIC HEARING

The Department has scheduled a public hearing on this proposed action. The hearing will be held at 560 J Street, Suite 220, Sacramento, California 95814, at 12:00 p.m. on June 12, 2007. At the hearing, any person may present statements of arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on June 11, 2007. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Ray Green, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by

Sections 407, 46000, 46001, and 46002 of the Food and Agricultural Code, and to implement, interpret, or make specific Sections 401, 46004.1, 46013.1, 46016.1, 46016.2, 46016.3, 46016.4, and 46016.5 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 407 of the Food and Agriculture Code states that the Secretary of California Department of Food and Agriculture (Secretary) may adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which he is directed or authorized to administer or enforce. Sections 46000-46002 state the Secretary shall enforce regulations adopted by the National Organic Program.

Section 401 of the Food and Agricultural Code declares the department shall promote and protect the agricultural industry of the state. Sections 46013.1 and 46016.1-46016.5 state the rights of appeal and mediation.

To comply with these sections of the Food and Agricultural Code the Department is proposing to add the following sections to the California Code of Regulations (CCR):

- Section 1391 will outline the appeal process for denial, suspension, or revocation of organic certification.
- Section 1391.1 will specify the process for mediation of the denial, suspension, or revocation of organic certification.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or saving imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

Adoption of these regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. This is based on the fact that: There will be no charge imposed upon either the certification agent or the operation seeking to use the appeal process. Also, there will be no cost to the certification agent or operation if mediation is by the Department or the County Agricultural Commissioners.

CONSIDERATION OF ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Ray Green, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Susan Shelton, Staff Services Analyst
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the

modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Shelton at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and Title 7, Code of Federal Regulations, Sections 205.662 and 206.663. Copies may be obtained by contacting Susan Shelton at her contact address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Susan Shelton at her contact address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shelton at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: www.cdfa.ca.gov/is/regulation.htm

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1690.1 TOE GRABS PROHIBITED

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1690.1, Toe Grabs Prohibited. The proposed regulation prohibits quarter horses from wearing toe grabs with a height greater than four millimeters on the front shoes while racing.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, June 19, 2007, or as soon after that as business before the Board will permit, at the Hollywood Park Racetrack, 1050 South Prairie Avenue, Inglewood, California.** At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on June 11, 2007.** The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6042
E-mail: harolda@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19562, Business and Professions (B&P) Code. Reference: section 19481, B&P Code.

B&P Code Sections 19420 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19481, B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. B&P Code Section 19562 states the Board may prescribe rules, regulations, and conditions under which all horse races with wagering on their results shall be conducted in California. B&P Code Section 19481 provides that the Board shall establish safety standards governing equipment for horse and rider.

The Board proposes to amend Rule 1690.1, Toe Grabs Prohibited. The proposed regulation would prohibit the use of toe grabs with a height greater than four millimeters on the front shoes of quarter horses participating in a race. A toe grab is a type of horseshoe that is used to provide added traction for a horse. Toe grabs elevate the toe of the shoe, and can range in height from eight millimeters (high) to four millimeters (low). In 2005, the Board added Rule 1690.1 to prohibit the use of toe grabs over four millimeters in height on thoroughbreds. The toe grab prohibition for thoroughbreds was based on several studies conducted by the California Veterinary Diagnostic Laboratory System (CVDLS) at the University of California, Davis. The CVDLS examined shoeing and catastrophic injury in racehorses. The shoes of injured horses were compared to those of uninjured horses to identify types of shoes associated with increased risk of injury. The toe grab was the type of traction device found on 90 percent of the injured horses and 80 percent of uninjured horses while rim shoes were found on 12 percent of injured horses and 30 percent of uninjured horses. The conclusion was that there appeared to be an association between toe grabs and increased risk of catastrophic injury in thoroughbred racehorses. The higher the toe grabs — the greater the risk. Between 1996 and 2002 several studies of toe grabs were conducted by CVDLS, each with the same conclusion. At the February 2007 Regular Board Meeting, the Board determined that quarter horses should be added to the provisions of Rule 1690.1.

**DISCLOSURE REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed addition of Rule 1690.1 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed addition of Rule 1690.1 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to add Rule 1690.1 does not affect small businesses. The rule prohibits the use of certain toe grabs on quarter horses racing in California, which are not small businesses under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to :

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Jacqueline Wagner, Manager
Policy and Regulations
Telephone: (916) 263-6041

**AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process

at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

REVISED NOTICE IS HEREBY GIVEN

On September 29, 2006, the Commissioner of Corporations (Commissioner) published a Notice of Proposed Changes regarding the proposed amendments of Sections 1422 and 1423 of the Commissioner's rules under the California Finance Lenders Law (CFL) (see California Regulatory Notice Register 2006, No. 39-Z).

Pursuant to this revised notice, the Commissioner proposes to amend Sections 1409, 1422 and 1423 of the rules under the CFL relating to the application for a finance lender or broker's license. This notice includes both the proposed amendments that were published on September 29, 2006 and the current proposed amendments.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Karen Fong, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., June 11, 2007. Written comments may also be sent to Karen Fong via electronic mail at regulations@corp.ca.gov or via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Under the CFL, the Department licenses and regulates finance lenders and brokers conducting business

in this state. The CFL provides that no person shall engage in the business of a finance lender or broker without obtaining a license from the Commissioner (Financial Code Section 22100). The Department's "Application for a License Under the California Finance Lenders Law" (Application) is contained in the rules. This form is used by applicants seeking to become licensed as finance lenders or brokers. The Department's "Short Form Application" (Short Form) is also contained in the rules. The Short Form is used by applicants holding one or more CFL licenses seeking to open a new location.

This regulatory action proposes to amend the Application and the Short Form by:

- Requiring consistent information from an applicant, regardless of the applicant's form of business;
- Clarifying and reorganizing the information being requested in the Application and Short Form;
- Limiting the information required to that which better determines the applicant's suitability for licensure; and
- Complying with changes regarding the processing of fingerprints as a result of Senate Bill 970 (Chapter 470, Statutes of 2003), Assembly Bill 502 (Chapter 425, Statutes of 2005) and Assembly Bill 1419 (Chapter 196, Statutes of 2005).

Section 1409

The proposed changes to this section clarify the requirements and the time frame for filing amendments to the Application.

Section 1422

The proposed changes to this section:

- Require all types of applicants to provide uniform identifying information;
- Require the applicant to provide fingerprint information to the Department and pay for the costs of processing the fingerprints;
- Delete application processing time frames;
- Require the applicant to provide information on criminal actions and specified civil actions;
- Require applicants applying as general partnerships to provide specified ownership information;
- Change the consent to service of process provisions;
- Clarify the Statement of Identity and Questionnaire (SIQ) procedures;
- Require individuals completing the SIQ to provide a copy of the judicial order or other specified document, to provide information on regulatory violations, and to disclose specified current licenses; and

- Make various nonsubstantive changes to grammar, editing, and punctuation.

Section 1423

The proposed changes to this section clarify the instructions and requirements of the Short Form.

AUTHORITY

Section 22150, Financial Code.

REFERENCE

Sections 22101, 22102 and 22106, Financial Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or grammatical in nature, will be made available to the public at least 15 days prior to the date that the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

**AVAILABILITY OF STATEMENT OF
REASONS, TEXT OF PROPOSED
REGULATIONS/INTERNET ACCESS**

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 21/05–Final Text. The revised initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 21/05–C Revised. These documents are also available at the Department’s website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California 95814–4052.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available. Copies of the Final Statement of Rea-

sons may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative that it has considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or savings to any state agency: None.
- Cost or savings in federal funding to the state: None.
- Cost to local agencies and school districts required to be reimbursed under Part 7 of Division 4 of the Government Code (commencing with Section 17500): None
- Other nondiscretionary cost or savings imposed on local agencies: None
- Cost to private persons or businesses directly affected: Insignificant or none.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not affect small businesses. A finance lender is not considered a small business under Government Code Section 11342(h)(2).
- Does not impose a state mandate on local agencies or school districts, or a state mandate that is required to be reimbursed pursuant to Part 7 of Division 4 of the Government Code (commencing with Section 17500).
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California, (2) the creation of new businesses or the elimination of existing businesses within the State of California, or (3) the expansion of businesses currently doing business within the State of California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSON OR BUSINESS**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

None.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Peggy Fairman, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814, (916) 322-3553.

**TITLE 10. DEPARTMENT OF
INSURANCE**

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105**

REG-2007-00001

April 23, 2007

**NOTICE OF PROPOSED ACTION
AND NOTICE OF PUBLIC HEARING
REGARDING LOW COST AUTOMOBILE
INSURANCE RATES**

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to consider rates for the California Low Cost Automobile Insurance program.

Insurance Code Section 11629.72(c) provides that, annually, the California Automobile Assigned Risk Plan ("CAARP") shall submit to the Commissioner a proposed rate and surcharge for approval. Accordingly, CAARP submitted its 2007 rate recommendation on December 26, 2006 proposing to maintain current rates and the 25 percent surcharge for certain drivers.

Legislation involving the California Low Cost Automobile Insurance program, Stats. 2005, chapter 435 (SB 20, Escutia), was approved by the Governor on September 30, 2005. The legislation extended the program to Alameda, Fresno, Orange, Riverside, San Bernardino and San Diego counties, commencing on April 1, 2006. The bill further authorized expansion of the program to all counties in California at the discretion of the Commissioner, subject to specified procedures. Following statutory procedures, the Commissioner has further expanded the program to Contra Costa, Imperial, Kern, Sacramento, San Joaquin, San Mateo, Santa Clara, and Stanislaus counties, effective June 1, 2006. The legislation does not specify a rate, but authorizes the Commissioner to adopt regulations establishing a rate, in consultation with CAARP, in order to implement the expansion of the program to these counties, as emergency regulations. Previous legislation mandated the availability of optional uninsured motorists bodily injury and medical payments coverages to policyholders at additional premium.

A Certificate of Compliance for such expansion by prior emergency regulatory actions was approved on December 27, 2006.

In accordance with statutory procedures, the Commissioner has further determined that need exists for the program in the counties of Merced, Monterey, Santa Barbara, Sonoma, Tulare, and Ventura. The decision was based on a consideration of the number or percentage of uninsured motorists within each county, the number or percentage of low income population in each county, the availability of affordable insurance options in the voluntary market, and affirmation of the need and desirability of the program expressed by consumers at public meetings in each county.

To expedite the program's expansion to these six additional counties, on December 4, 2006, CAARP's Advisory Committee proposed to the Commissioner rates for the liability policy and optional coverages. Upon review, the Commissioner determined that the rates proposed by CAARP were adequate and consistent with statutory rate-setting standards and proposed those rates for adoption on an emergency basis, which were approved on March 9, 2007, effective March 30, 2007.

Currently, the annual premiums for the liability policy, by county, are \$318 for Alameda, \$313 for Contra Costa, \$295 for Fresno, \$208 for Imperial, \$236 for Kern, \$350 for Los Angeles, \$308 for Orange, \$243 for Riverside, \$378 for Sacramento, \$280 for San Bernardino, \$265 for San Diego, \$336 for the city and county of San Francisco, \$292 for San Joaquin, \$303 for San Mateo, \$286 for Santa Clara, and \$354 for Stanislaus. As approved by emergency regulations, effective March 30, 2007, the annual premiums, by county, are

\$267 for Merced, \$210 for Monterey, \$220 for Santa Barbara, \$270 for Sonoma, \$222 for Tulare, and \$280 for Ventura. A 25 percent surcharge is added to the base rate for unmarried male drivers ages 19 through 24 years of age.

Annual premiums for optional uninsured motorists coverage, by county, are currently \$33 for Alameda, \$29 for Contra Costa, \$53 for Fresno, \$33 for Imperial, \$31 for Kern, \$67 for Los Angeles, \$39 for Orange, \$33 for Riverside, \$50 for Sacramento, \$41 for San Bernardino, \$27 for San Diego, \$25 for the city and county of San Francisco, \$36 for San Joaquin, \$26 for San Mateo, \$25 for Santa Clara, and \$46 for Stanislaus. As approved by emergency regulations, effective March 30, 2007, the annual premiums, by county, are \$36 for Merced, \$32 for Monterey, \$31 for Santa Barbara, \$31 for Sonoma, \$44 for Tulare, and \$32 for Ventura.

For optional medical payments coverage, by county, premiums are currently \$23 for Alameda, \$22 for Contra Costa, \$44 for Fresno, \$23 for Imperial, \$24 for Kern, \$37 for Los Angeles, \$31 for Orange, \$18 for Riverside, \$30 for Sacramento, \$23 for San Bernardino, \$19 for San Diego, \$29 for the city and county of San Francisco, \$30 for San Joaquin, \$21 for San Mateo, \$19 for Santa Clara, and \$45 for Stanislaus. As approved by emergency regulations, effective March 30, 2007, the annual premiums, by county, are \$30 for Merced, \$25 for Monterey, \$22 for Santa Barbara, \$26 for Sonoma, \$33 for Tulare, and \$22 for Ventura.

In its rate recommendation for 2007, CAARP has proposed to maintain current rates for the liability policy and optional uninsured motorist and medical payments coverages. It has also proposed to maintain the 25 percent surcharge for certain drivers.

The Commissioner will consider the current rates and CAARP's rate proposal and invites other comments from the public. Premium rates are specified in the program's Plan of Operations, approved by the Commissioner. California Code of Regulations, Title 10, Chapter 5, Section 2498.6 references this plan.

AUTHORITY TO ADOPT RATES AND REFERENCE

Authority for the proposed rates are vested in the Insurance Commissioner pursuant to California Insurance Code Sections 11620, 11624, 11629.7, 11629.72, and 11629.79. Premium rates are referenced in Section 27 and Exhibit E of the Program's Plan of Operations. The proposed regulation implements, interprets, and makes specific Insurance Code sections 11629.72 and 11629.79, as amended by 2002 Stats., chapter 742, 2005 Stats., chapter 435, and subsequent decisions of

the Commissioner. Government Code Section 11343(a) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed rates at the following date, time, and place:

Date and Time: **June 26, 2007**
 10:00 a.m.

Location: **45 Fremont Street**
 22nd Floor Hearing Room
 San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed rates prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mary Ann Shulman, Senior Staff Counsel
California Department of Insurance
Legal Division
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Shulmanm@insurance.ca.gov
Telephone: (415) 538-4133
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
MohrE@insurance.ca.gov
Telephone: (415) 538-4112
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on June 26, 2007**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492–3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Insurance Code Sections 11629.7 through 11629.85 establish, within the California Automobile Assigned Risk Plan, established under Section 11620 of the Insurance Code, a statewide low-cost automobile insurance program.

Recent legislation, Stats. 2005, chapter 435 (SB 20, Escutia), authorized expansion of the program from the initial counties of Los Angeles and the city and county of San Francisco to all counties in California, subject to specified procedures, mandating commencement of operations in Alameda, Fresno, Orange, Riverside, San Bernardino and San Diego counties, effective April 1, 2006. Previous legislation mandated the availability of optional coverages of uninsured motorists and medical payments to policyholders at additional premium. Statutes 2005, chapter 435 did not specify a rate, but autho-

rized the Commissioner to adopt regulations establishing rates to implement expansion of the program to these counties, in consultation with CAARP, as emergency regulations.

To implement expansion of the mandated counties, the Commissioner established rates, in consultation with CAARP, by emergency regulatory action, as authorized by Insurance Code section 11629.79. Following specified statutory procedures, the Commissioner further expanded the program to the counties of Contra Costa, Imperial, Kern, Sacramento, San Joaquin, San Mateo, Santa Clara, and Stanislaus, establishing rates by emergency regulations, effective June 1, 2006. Subsequently, a Certificate of Compliance for these prior regulatory actions implementing expansion of the program to the mandated counties and the counties designated by the Commissioner was approved on December 27, 2006. (DOI File No. RH05050092)

Seeking to further expand the program, following specified statutory procedures, on September 15, 2006, the Commissioner made an initial determination of need for the program in six additional counties: Merced, Monterey, Santa Barbara, Sonoma, Tulare, and Ventura. Subsequently, the Commissioner held public forums in each of these counties to discuss the need and desirability for such a program. Based on a consideration of specified factors, the Commissioner made a final determination of need for the program in each of the six counties, as required by statute.

To expedite the program's operation in these additional counties, the Commissioner sought and received the advice of CAARP. On December 4, 2006, CAARP's Advisory Committee proposed to the Commissioner rates for the liability policy and additional coverages. After review, the Commissioner adopted CAARP's proposed rates in emergency regulations, as authorized by Insurance Code Section 11629.79, which were approved, effective March 30, 2007. The Department's File No. ER-2007-00001/OAL File No. 07-0302-01EFP, approved March 9, 2007, is herein incorporated by reference.

Because the program is established and administered through CAARP, CAARP procedures are applied where appropriate and not inconsistent with the low cost automobile insurance statutes. Insurance Code Sections 11620 and 11624 require the Commissioner to hold a public hearing before amending assigned risk plan rates.

Section 11629.7 of the Insurance Code requires that, after a public hearing, the Commissioner shall approve or issue a reasonable plan for the equitable apportionment, among insurers, of eligible consumers. The plan also contains rules and rates. This plan, approved by the Commissioner, is referenced in Title 10, Section 2498.6 of the California Code of Regulations.

Under the program, the low-cost auto policy satisfies financial responsibility laws and provides coverage of \$10,000 for liability for bodily injury or death to one person, subject to a cumulative limit of \$20,000 for all persons in one accident, and \$3,000 for liability for damage to property. In addition to eligibility and other requirements, the statute sets forth the annual premium rates. In certain cases, surcharges are added to the base rate. The statute also provides procedures for adjusting the rates.

Insurance Code Section 11629.72(c) provides that, annually, CAARP shall submit to the Commissioner a proposed rate and surcharge for approval. Accordingly, CAARP has submitted a proposal to maintain current rates for the liability policy and optional coverages and further proposes to maintain the 25 percent surcharge rate. Further details appear in the application on file with the Commissioner, which is available for review as set forth below.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES/SCHOOL DISTRICTS/FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other non-discretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

Because the proposal involves rates for private passenger automobiles, the Insurance Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or

elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not impact businesses, but will have a potential cost impact on private persons directly affected.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

EFFECT ON SMALL BUSINESSES

The Insurance Commissioner has initially determined that the proposal will have minimal, if any, effect on small businesses and invites comments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The agency invites interested persons to present statements or arguments with respect to the proposed rate, or other alternatives, at the scheduled hearing or during the written comment period.

PLAIN ENGLISH

The rate application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the rate proposal, in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, the text of regulations, and all the information upon which this proposal is based are available for inspection or copying, and will be provided at no charge upon request to a contact person listed above. Further details of CAARP's rate application are on file

with the Commissioner and available for review as set forth below.

QUESTIONS REGARDING REGULATIONS / ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of the proposed rate application. **By prior appointment**, CAARP's rate application is available for inspection at the public viewing rooms at 45 Fremont Street, 22nd Floor, San Francisco, California 94105 by calling 415/538-4300, and at the Ronald Reagan State Building, 300 South Spring Street, Los Angeles, CA 90013 by calling 213/346-6707 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday. Interested persons may direct questions about the proposed rate application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont, 21st Floor, San Francisco, California 94105 between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

FINAL STATEMENT OF REASONS

Once prepared, the Final Statement of Reasons will be made available through the contact persons listed above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, this Notice of Proposed Action, and the text of regulations will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER 2007 AMENDMENTS TO THE PHASE 3 CALIFORNIA REFORMULATED GASOLINE REGULATIONS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the California Reformulated Gasoline (CaRFG) Regulations. The proposed amendments would: (1) help preserve the benefits of the Phase 2 CaRFG standards and update the Predictive Model to reflect the current motor vehicle fleet and new data on how fuel properties affect motor vehicle emissions, (2) lower the sulfur cap limit from 30 parts per million by weight (ppmw) to 20 ppmw, (3) restore the 7.00 pounds per square inch (psi) Reid vapor pressure (RVP) flat limit when the evaporative emissions portion of the Predictive Model is used to certify ethanol blends, (4) add provisions allowing for the use of alternative emission reduction plans to mitigate emissions associated with permeation, (5) add provisions to allow the option of using short term averaging to address emissions occurring when sulfur levels unintentionally exceed applicable flat or averaging limits, and (6) include other miscellaneous changes to improve consistency, flexibility, and enforceability.

DATE: June 14, 2007

TIME: 9:00 a.m.

PLACE: San Joaquin Valley Air Pollution Control
District
1990 East Gettysburg Avenue
Fresno, California 93726

or Via Videoconference (2 Locations)
District Northern Region Office
4230 Kiernan Avenue, Suite 130
Modesto, California 95356

District Southern Office
2700 M Street, Suite 275
Bakersfield, California 93301

This item will be considered at a one-day meeting of the Board, which will commence at 9:00 a.m. on Thurs-

day, June 14, 2007. The agenda for the meeting will be available at least 10 days before June 14, 2007.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please call ARB's Bilingual Manager at (916) 323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2261, 2262, 2262.3, 2262.4, 2262.5, 2262.9, 2263, 2263.7, 2264.2, 2265 (and the incorporated "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model"), 2266, 2266.5, 2270, 2271, and 2273, and proposed new sections 2260(a)(0.5), (0.7), (7.5), (8.5), (10.5), (10.7), (19.7), (23.5), and (23.7), 2262.3(d), 2264.2(a)(3), (b)(5), and (d), 2265(c)(4), 2265.1, 2265.5, and 2266(b)(3), (4), and (5) of Title 13, California Code of Regulations (CCR).

Background

The ARB administers the CaRFG regulations, which have applied to all California gasoline since March 1996; the Phase 3 CaRFG standards have applied since December 31, 2003. The CaRFG regulations establish specifications for the following eight gasoline properties: sulfur, benzene, olefin, aromatic hydrocarbon, and oxygen contents, 50 percent distillation temperature (T50), 90 percent distillation temperature (T90), and summertime RVP. The Phase 3 CaRFG regulations also prohibit the use of oxygenated compounds (oxygenates) other than ethanol in CaRFG, and regulate the composition of denatured ethanol that can be blended with California reformulated gasoline blendstock for oxygenate blending (CARBOB) to produce CaRFG.

The CaRFG regulations allow refiners to use a "Predictive Model" to certify alternative formulations. The Predictive Model is a set of mathematical equations that relate emissions rates of exhaust and evaporative hydrocarbons and carbon monoxide (CO), oxides of nitrogen (NOx), and potency-weighted toxics for four toxic air contaminants (benzene, 1,3-butadiene, formaldehyde, and acetaldehyde) to the values of the eight regulated gasoline properties. An alternative gasoline formulation based on the Predictive Model is acceptable if emissions of reactivity-weighted hydrocarbons and CO (total ozone forming potential), NOx, and potency-

weighted toxics resulting from this formulation are no greater than emissions from gasoline having the specifications set forth in the CaRFG standards. Currently, most of the gasoline sold in California complies with the CaRFG regulations through the use of the Predictive Model.

Since 1995, most of the State's gasoline has contained about 2 percent oxygen by weight. From 1995 to 2002, methyl tertiary-butyl ether (MTBE) was the oxygenated compound used in most California gasoline. Since December 31, 2003 — the Phase 3 CaRFG compliance deadline — ethanol has been the only oxygenate allowed in California gasoline. The widespread use of oxygenated compounds in California gasoline has primarily resulted from two programs mandated by the federal Clean Air Act — the federal reformulated gasoline (RFG) program administered directly by the U.S. Environmental Protection Agency (U.S. EPA) in the smoggiest areas of the country, and the wintertime oxygenates program which is ultimately administered by the states. The federal Energy Policy Act of 2005 directed U.S. EPA to lift the federal oxygen content requirement for federal RFG and set a renewable fuels standard (RFS) which requires an increasing use of renewable transportation fuel nationwide. In February 2006, U.S. EPA lifted the federal oxygen content requirement for federal RFG. The federal wintertime oxygen content requirement for carbon monoxide nonattainment areas is still in effect for wintertime gasoline sold in the South Coast Air Basin and Imperial County. Almost all gasoline marketed in California today contains ethanol.

The Proposed Amendments

Health and Safety Code 43013.1 requires that the Phase 3 CaRFG regulations preserve the emissions and air quality benefits of the Phase 2 CaRFG program. The ARB staff has determined that the use of ethanol in Phase 3 CaRFG increases evaporative emissions, relative to Phase 2 CaRFG, through a process known as permeation. Permeation occurs in both on-road vehicles and off-road engines and portable fuel containers.

The staff is proposing amendments to the CaRFG regulations and an update to the Predictive Model to mitigate the excess emissions associated with permeation from on-road motor vehicles. Under the proposed amendments, starting December 31, 2009, a fuel formulation cannot be treated as fully complying with the Phase 3 CaRFG standards unless the excess emissions associated with permeation from on-road vehicles are fully mitigated.

At this time, staff does not have adequate data to design amendments to the CaRFG3 rules to ensure that the increase in evaporative emissions due to the use of ethanol in off-road engines and portable fuel containers is

fully mitigated. Staff is initiating additional test programs to evaluate the effect of ethanol in gasoline on both exhaust and evaporative emissions and plans to propose appropriate mitigation strategies as soon as practical.

To mitigate the excess emissions associated with permeation from on-road vehicles, the refiners can choose one of two options. First, they can use the Predictive Model to develop an alternative fuel formulation. Using this approach will likely require the use of a very low sulfur fuel content and ethanol amounts approaching 10 percent by volume. As such, refinery modifications are needed to produce the very low sulfur fuels and rebalance the production to accommodate the higher ethanol contents. Therefore, the staff is proposing a second option, referred to as an alternative emissions reduction plan (AERP).

The AERP would allow a producer, or an importer that produces gasoline, to mitigate the excess emissions associated with permeation by obtaining emission reductions from combustion or other gasoline-related sources. The producer or importer must still comply with the default flat limits, averaging limits, a test-certified alternative gasoline formulation, or the non-permeation portion of the Predictive Model. All alternative emissions reduction plans sunset on December 31, 2011, unless the Executive Officer approves an extension in advance.

The need to address excess emissions associated with permeation caused by the use of ethanol will make it more difficult and costly for refiners to comply with the amended Phase 3 CaRFG regulations as proposed. Therefore, the staff is also proposing to provide some additional flexibility to the producers and importers to address the expected ongoing difficulties in meeting the very low sulfur content requirements. This option allows producers and importers to specifically offset a batch of gasoline that does not meet CaRFG3 standards due to an unintentionally high sulfur content. In this case, the producer or importer would be permitted to offset any increased emissions by producing a series of subsequent batches that are cleaner than the Phase 3 CaRFG standards. In no event could any batch exceed the cap limit for sulfur. This option would apply beginning December 31, 2009.

The Phase 3 CaRFG regulations added provisions allowing gasoline producers or importers to elect to use a new evaporative emissions element of the Predictive Model. In this Predictive Model evaporative emissions element, the Phase 3 CaRFG standard for RVP was set at 0.10 psi below the regular Phase 3 CaRFG flat limit for RVP in order to compensate for an expected increase in volatility due to the commingling of California gasolines blended with ethanol and California gasoline blended without ethanol. Since the use of the evapora-

tive portion of the Predictive Model is voluntary, there is no assurance that any increase in emissions associated with commingling is actually being offset. The vast majority of gasoline now sold in California is produced with ethanol, and it is expected this will continue in the future given the federal RFS. Therefore, an emissions increase from commingling ethanol blended gasolines and non-ethanol blended gasolines in the fuel tanks of motor vehicles will only occur when non-ethanol blends are introduced in the California market. Staff is accordingly proposing that all non-ethanol blends of gasoline be certified based on a flat limit of 6.90 psi RVP, while the normal Phase 3 CaRFG flat limit of 7.00 psi RVP be used for ethanol blends using the evaporative emissions element of the Predictive Model.

The staff is also proposing that the enforcement caps for sulfur content in gasoline be lowered from 30 parts per million by weight (ppmw) to 20 ppmw (21 ppmw for CARBOB). Based on its analysis of projected complying formulations using the Predictive Model, staff believes that refiners will generally not be able to produce complying California gasoline with sulfur limits higher than 20 ppmw. The proposed lower sulfur cap will not significantly affect flexibility to make complying fuels. It will, however, increase the enforceability of the CaRFG program by making it easier to detect non-complying gasoline and help to protect the performance of sulfur-sensitive emission control components.

The staff is proposing other amendments to the CaRFG regulations to improve consistency, flexibility, and enforceability. This includes proposed amendments to section 2262.9 and section 2266.5 that would change the maximum allowed denaturant content in denatured ethanol, consistent with the current standards of the American Society of Testing and Materials.

COMPARABLE FEDERAL REGULATIONS

The federal RFG regulations apply to about 80 percent of California's gasoline and are contained in 40 CFR §§ 80.40 and following. The CaRFG regulations apply to all gasoline sold, supplied, or offered in California. All CaRFG meets or exceeds the requirements of the federal RFG regulations resulting in significant additional emission reductions. Under 40 CFR § 80.81, gasoline meeting the Phase 3 CaRFG standards is exempt from several of the enforcement requirements of the federal RFG regulations.

The RFS standard of the Energy Policy Act of 2005 requires the use of renewable transportation fuels nationwide in an increasing amount annually. On April 10, 2007, the U.S. EPA Administrator announced the adoption of regulations for an RFS program for 2007 and beyond, contained in 40 CFR §§ 80.1100 and following.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the environmental and economic impacts of the proposal and supporting technical documentation. The report is entitled "Proposed 2007 Amendments to the Phase 3 California Reformulated Gasoline Regulations."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing (by April 26, 2007).

Upon its completion, the Final Statement of Reasons (FSOR) will also be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed amendments may be directed to the designated agency contact persons, Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, at (916) 322-6020, or Mr. Steven Brisby, Manager, Fuels Section, (916) 322-6019.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Alexa Malik, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, will be available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2007/carfg07/carfg07.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons and businesses in reasonable compliance with the proposed regulations are presented below.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The only entities in California that would incur significant compliance costs would be 12 large petroleum refineries and one small refinery. The potential total annualized cost would be about \$100 million per year, or less than 1 cent per gallon of CaRFG produced.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not significantly affect small businesses because the affected refineries are not small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the CaRFG regulations which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create significant costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, June 13, 2007**, and addressed to the following:

Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street,
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Govt. Code section 6250 et. seq.), your written and oral comments, attachments and associated contact information becomes part of the public record and can be released to the public upon request. This includes your personal information, such as your home address, your home phone number, and your personal email address. Additionally, your comments, attachments and associated contact information may become available to Google or other search engines.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 39600, 39601, 43013, 43013.1, 43018, and 43101, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). This regulatory action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43101, and 43830.8, Health and Safety Code, and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title

2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications, if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to adopt Sections 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14 and 346.16 in Chapter 1, Division 1, Article 4.8 of Title 13, California Code of Regulations, Mature Driver Improvement Course Approval Program.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on June 11, 2007, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code sections 1651 and 1652, in order to implement, interpret or make specific Vehicle Code sections 1652, 1675, 1676, 1677, and Section 11628.3 of the Insurance Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code Sections 1675, 1676, and 1677 provide for the development of departmental standards and criteria for the approval of a mature driver improvement course, the collection of fees from providers of courses, and for the payment of a course fee to be paid directly to the providers by participants. AB 2407, Salinas (Chapter 129, 2006), amended Vehicle Code section 1675 to increase the maximum fee that may be charged for a mature driver improvement course, and authorized a 240 minute renewal course that allows the completion certificate to be renewed if a subsequent course is taken within one year of expiration of a completion certificate.

Approximately 50,000 completion certificates are issued annually to participants by fewer than 50 providers of mature driver improvement courses throughout California. The proposed regulations would codify the mature driver improvement course approval program for providers offering the mature driver improvement course to drivers 55 years of age or older for the purpose of obtaining a reduced premium rate for motor vehicle liability insurance. The regulations also adopt standards for non-classroom methodology instruction courses.

DOCUMENTS INCORPORATED BY REFERENCE

The following forms are incorporated by reference throughout Sections 346.00, 346.02, 346.04, 346.14 and 346.18. These forms are not published in the California Code of Regulations, because it would be impractical and cumbersome to publish these documents in the Code of Regulations:

OL 1001 (Rev. 12/2006), Mature Driver Improvement Course

OL 1002 (Rev. 1/2007), Application for Approval of Mature Driver Improvement Course

OL 1005 (Rev. 2/2007), Mature Drive Improvement Course Certificate Order Form

OL 1008 (Rev. 10/2006), Mature Driver Improvement Course Guidelines

The forms are available to the public except where restricted under the proposed regulations.

FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.
- The adoption of this regulation will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and may possibly expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses adversely because the regulations codify an existing practice and introduce new avenues for generating revenue.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has

otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Maria Grijalva, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-9001, or mgrijalva@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. In the case of these proposed regulations, the entire Express Terms of the proposed action are being adopted and therefore, the underlining strikeout method will not be used since there are no deletions. The contact person identified in this notice shall also make available to the public upon request the initial statement of reasons and final statement of reasons, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at www.dmv.ca.gov, Other Services, Legal Affairs Division, Regulatory Actions web page.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on

which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to adopt Article 1.6., Section 3269.1 of Subchapter 4, Chapter 1 of Title 15, Division 3, of the California Code of Regulations (CCR), and to amend sections 3005, 3315, and 3341.5, concerning the integrated housing of inmates.

PUBLIC HEARING

Date and Time: **June 18, 2007, 9:00 a.m. to 11:00 a.m.**
Place: Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **June 18, 2007, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 341-7390

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

John McClure
Regulation and Policy Management Branch
Telephone (916) 341-6894

Questions regarding the substance of the proposed regulatory action should be directed to:

R. Grenz
Associate Warden, Division of Adult Institutions
Telephone (916) 327-5311

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: F/Y 06/07 \$4.8 million.
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not effect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or effect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- This action adopts provisions that will ensure that race will not be used as the primary determining factor in housing the Department's inmate population. All inmate housing assignments shall be made on the basis of available information, individual case factors, and objective criteria, to implement an integrated housing plan. It is the intent of the Department to ensure that housing practices are made consistent with the safety, security, treatment, and rehabilitative needs of the inmate, as well as the safety and security of the public, staff, and institutions.
- The housing plan involves an interview with the inmate, a review of the inmate's central file, and a review of all available and relevant information. The housing plan will use all available information

to determine an inmate's eligibility for integration and will assign inmates to the first available and appropriate bed based on their integration eligibility.

- Implementation of the integrated housing plan will occur over several phases. The first phase will occur in 2007, and will consist of the development of an integrated coding system that will be used to identify each inmate's eligibility to integrate. The actual implementation of integrated housing will commence in 2008 at designated facilities such as reception centers, and then be phased in statewide commencing in 2009, over a period of several years.

TITLE 16. DENTAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Doubletree Hotel, 7450 Hazard Center Drive, San Diego, California, at 10:00am on June 13, 2007. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California at its office not later than 5:00 p.m. on June 11, 2007 or must be received by the Dental Board of California at the hearing. The Dental Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 1614 and 1645 of the Business and Professions Code, and to implement, interpret or make specific Section 1645 of said Code, the Dental Board of California is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Title 16 of the California Code of Regulations, Sections 1016 and 1017

Business and Professions Code Section 1645 specifies that the board may, as a condition of license renew-

al, require licentiates to successfully complete a portion of the required continuing education in specific areas adopted in regulations by the board, and that the board may prescribe this coursework within the general areas of patient care, health and safety, and law and ethics.

The purpose of the proposed changes is to clarify continuing education course requirements for licensees and course providers. The amendments would clarify that the mandatory reporter obligations for licensees as set forth in the California Penal Code may be included in mandatory courses required for license renewal.

The proposed changes would also clarify that courses in diagnostic protocols and procedures, charting, nutrition, disaster recovery, peer evaluation, administration of anesthesia or sedation, and courses relating to selection, use and care of dental instruments are allowed for credit for renewal.

Proposed amendments would allow continuing education credit for courses in cultural competencies such as bilingual dental terminology, cross cultural communication, public health dentistry and management of the special-needs patient, to better serve the dental needs of California's diverse population.

Some of the amendments will allow licensees to obtain continuing education credit for computerized dental office management or new technology designed primarily for improved patient care, required courses in teaching methodology, and courses in cultural competencies and management of the special needs patient.

Additional amendments clarify that courses relating to the purchase, sale or transfer of a dental practice, and courses pertaining to cosmetic enhancement outside the licensee's scope of practice shall not be recognized for continuing education credit.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

These regulations will allow continuing education credits to be granted to licensees for taking courses that are currently not specifically allowed, although these courses involve actual delivery of dental services and communication and cultural competency with California's ethnically diverse population. The regulations also clarify the requirements of the written certification that course providers must submit to the board, and set board policy into regulation.

Impact on Jobs/New Businesses:

The Dental Board of California has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Dental Board of California is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Dental Board of California has determined that the proposed regulations would not affect small businesses unless those small businesses were course providers of dental continuing education courses. If a dental continuing education provider that is a small business offered courses for dental licensees' renewal, that course provider would be able to offer a greater variety of courses and would be required to provide a sampling of the written certification issued to participants, indicate the course category and provide the 11-digit course registration number in the upper left hand corner of the certificate.

CONSIDERATION OF ALTERNATIVES

The Dental Board of California must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Dental Board of California has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California at 1432 Howe Avenue, Suite 85, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF
THE FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below [or by accessing the website listed below].

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Donna Kantner
Address: 1432 Howe Avenue, Suite 85
Sacramento, CA 95825
Telephone No.: (916) 263-2300 x2308
Fax No.: (916) 263-2140
E-mail Address: Donna_Kantner@dca.ca.gov

The backup contact person is:

Name: Richard L. Wallinder, Executive
Officer
Address: 1432 Howe Avenue, Suite 85
Sacramento, CA 95825
Telephone No.: (916) 263-2300
Fax No.: (916) 263-2140
E-mail Address: Rick.Wallinder@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.dbc.ca.gov

TITLE 22. DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

45-DAY PUBLIC NOTICE AND COMMENT
PERIOD

PROPOSED REGULATIONS

AMENDMENT TO LAND USE COVENANTS

Department Reference Number: R-2006-04

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend section 67391.1 of California Code of Regulations, title 22, division 4.5, chapter 39. The purpose of recorded land use covenants is to protect the public health and safety, and the environment from contaminated land when there is contamination left in place. The contamination could be from hazardous materials, hazardous wastes, waste constituents, or hazardous substances. DTSC adopted the existing regulation to clarify when it is appropriate for DTSC to require land use restrictions in the form of covenants, and the exceptions for properties that have contamination left in place.

This proposed rulemaking would amend DTSC's regulations to: 1) clarify when it is appropriate for DTSC to require land use restrictions in the form of covenants, and to include a description of the implementation and enforcement provisions necessary to ensure the integrity and long-term protectiveness of the land use covenant; 2) ensure that the regulation applies to site cleanup activities being conducted under DTSC's new brownfields authority of chapter 6.82 of the Health and Safety Code; and 3) for federally-owned property, permit land use covenants to be executed by DTSC and the federal government, or the successor-in-interest to the federal government, during the initial property transfer process, and to be properly recorded.

PUBLIC HEARING AND WRITTEN
COMMENT PERIOD

A written comment period has been established commencing on Friday, April 27, 2007, and closing on Monday, June 11, 2007. DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on Monday, June 11, 2007 in Conference Room 210, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted

no later than 5:00 p.m. on June 11, 2007 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the California Environmental Protection Agency (Cal/EPA) Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Nicole Sotak, Chief, Regulations Section, at (916) 327-4508 or by e-mail at regs@dtsc.ca.gov by Tuesday, May 29, 2007. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette (etc) as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Adrian Recio at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 25351.5. This section grants DTSC authority to adopt regulations necessary to carry out its responsibilities, including, but not limited to, regulations governing the expenditure of, and accounting procedures for moneys allocated to state, regional, and local agencies pursuant to chapter 6.8.

Health and Safety Code section 25150. This section grants DTSC authority to adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to public health, domestic livestock, wildlife, or the environment.

These regulations implement, interpret, or make specific the following:

Health and Safety Code section 25395.99. This section specifies that a response plan pursuant to Health and Safety Code chapter 6.82 may require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities, if, after completion of the removal and remedial actions specified in the response plan, hazardous materials remain at the site at a level that is not suitable for the unrestricted use of the site. This section also specifies that if DTSC approves a response plan that requires the use of a land use control, the land use control must be executed by the landowner and recorded in the county where the site is located.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law

At contaminated sites, corrective actions and/or removal or remedial actions (also known as "response action") may be undertaken pursuant to the enforcement authorities of chapters 6.5, 6.8, 6.82, or 6.85 of division 20 of the Health and Safety Code. These response actions encompass all actions that may be taken to address a release or threatened release of hazardous materials, hazardous wastes or constituents, or hazardous substances. Under certain conditions, contamination may remain in place as part of the final response action. Where that occurs, a land use covenant restricting use of the property is typically required to prevent unsafe exposures to contaminants. This regulation covers several chapters under the Health and Safety Code, and types of contamination that may be left in place. The following information is provided to assist in locating where to find some of the definitions for hazardous material, hazardous substance, and types of hazardous waste. This excerpt is from Health and Safety Code section 25260(d). "Hazardous material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. "Hazardous material" includes, but is not limited to, all of the following: 1) a "hazardous substance," as defined in section 25281 or 25316; 2) a "hazardous waste," as defined in section 25117; and 3) a "waste," as defined in section 470 or as defined in section 13050 of the Water Code."

Recorded land use covenants contain land use restrictions that can specify requirements or limit the use of real property and affect the title to property. The purpose of recorded land use covenants is to protect the public health and safety, and the environment from contaminated land when there is contamination left in place. The contamination could be from hazardous materials, hazardous wastes, waste constituents, or hazardous substances. In addition to protecting against exposure, land use covenants can help provide information about the property containing contamination to local governments and the public, as well as real estate transaction participants (buyers, sellers, lending institutions, brokers, title and escrow companies). Land use covenants also ensure that long-term mitigation measures or monitoring requirements are carried out and maintained, and ensure that subsequent property owners or lessees have a duty to assume responsibility for any requirements or restrictions pertaining to contamination when they take over the property.

Existing State regulations (Cal. Code Regs., tit.22, § 67391.1) clarify when it is appropriate for DTSC to require land use restrictions in the form of covenants, and the exceptions for properties that have contamination left in place.

California Land Reuse and Revitalization Act of 2004

Assembly Bill 389 (Stats. 2004, ch. 705) enacts the California Land Reuse and Revitalization Act of 2004 (Act), effective January 1, 2005, that provides liability protections to brownfield developers, innocent landowners and contiguous property owners which are intended to promote the cleanup and redevelopment of blighted or contaminated properties. The bill establishes a process for eligible property owners to obtain the immunities, conduct a site assessment and implement a response action, if necessary, to ensure that the property is ready for reuse. The Act authorizes a response plan to require the use of a land use control that imposes appropriate conditions, restrictions, and obligations, on land use or activities, if contamination will remain at the site at a level that is not suitable for unrestricted use of the property (Health & Saf. Code, § 25395.99). The Act further specifies that if an agency approves a response plan that requires the use of a land use control, the land use control must be executed by the landowner and recorded in the county recorder's office where the property is located.

Federal Property Transfers

DTSC oversees the investigation and cleanup of contaminated California properties currently or previously owned and operated by the various military branches within the United States Department of Defense (DoD). To ensure that all cleanup work meets environmental regulatory standards, DTSC works directly with DoD

and, at some military bases, the United States Environmental Protection Agency (US EPA). One of DTSC's missions is to protect human health and the environment from threats posed by hazardous contamination while facilitating the reuse and property transfer of these closed military facilities. These properties must be cleaned up to "unrestricted" use (i.e., residential use) or the hazard must be reduced to acceptable levels for other specified "restricted" uses. DTSC recognizes the importance of returning closed military property to economic viability, while protecting public health and the environment during and after reuse and redevelopment activities.

Policy Statement Overview

Objectives: DTSC finds this proposed rulemaking necessary to increase the number of cleanup activities at brownfields sites and former military bases, while protecting public health and safety, and the environment, and to: 1) clarify when it is appropriate for DTSC to require land use restrictions in the form of covenants, and to include a description of the implementation and enforcement provisions necessary to ensure the integrity and long-term protectiveness of the land use covenant; 2) ensure that the regulation applies to DTSC's new brownfields authority under the Act; and 3) for federally-owned property, permit land use covenants to be executed by DTSC and the federal government, or the successor-in-interest to the federal government, during the initial property transfer process, and to be properly recorded.

Proposed Regulations

These proposed regulations will provide necessary clarifying and conforming amendments to DTSC's existing regulations for recording land use covenants to protect public health and safety, and the environment from contaminated land when there is contamination left in place. DTSC adopted the existing regulations to clarify when it is necessary for DTSC to require land use restrictions in the form of covenants, and the exceptions for properties that have contamination left in place.

Implementation and Enforcement Provisions

The existing regulation requires DTSC to set forth and define land use restrictions in the form of covenants in a remedy selection or response action decision document prior to approving or concurring with a facility closure, corrective action, Removal Action Workplan (RAW), Remedial Action Plan (RAP), or other similar document when contamination will remain at the property at levels which are not suitable for unrestricted use of the land. The proposed regulation is needed to clarify and give flexibility for more efficient drafting of the implementation and enforcement provisions. In other words, the proposed regulation will allow the imple-

mentation and enforcement provisions to be inserted into any document, including the decision document, any supporting enforceable document, the land use covenant, or operation and maintenance agreement. In addition, the existing language could be misinterpreted to require the submission of a separate enforcement and implementation plan. The amendment will clarify that a separate enforcement and implementation plan is not required. This change will clear up confusion and unnecessary delays in the overall process.

The California Land Reuse and Revitalization Act of 2004 (Act)

The existing regulation specifies that DTSC will not certify that a site cleanup has been satisfactorily completed (except for any necessary long-term operation and maintenance activities) until any required land use covenant has been signed by DTSC and the landowner and recorded in the county recorder's office where the property is located. The regulation applies to site cleanup activities being conducted under the authorities of chapters 6.5, 6.8, or 6.85 of the Health and Safety Code, or school sites where DTSC is overseeing the investigation and cleanup actions under the Education Code. The applicable Education Code sections do not lay out the process for remediation. Rather, the Education Code directs DTSC to follow the remediation process pursuant to chapter 6.8 of division 20 of the Health and Safety Code. The proposed regulation is needed to additionally apply to site cleanup activities being conducted under the new authorities of the Act (Health & Saf. Code, ch. 6.82). The proposed regulation will also ensure that DTSC is reimbursed for its costs associated with the administration of such controls at these sites.

Federal Property Transfers

The existing regulation addresses situations requiring land use covenants for land owned by the federal government. The regulation requires appropriate land use covenants to be executed by DTSC and the federal agency (property owner) and to be properly recorded before the property can be determined as "suitable for transfer." The existing regulation did not allow land use covenants to be recorded by a successor-in-interest for federally-owned property. This regulation has proven to be too restrictive and limiting. DoD has a policy that limits its ability to enter into land use covenants on federally-owned property. DTSC is experiencing problems with certain federal military facilities when contamination is left in place at federally-owned lands, including military bases, and a land use covenant is required. The proposed regulation would permit land use covenants to be executed by DTSC and the federal government, or the successor-in-interest to the federal government, during the initial property transfer process, and to be properly recorded. This provision is

equally protective of public health and safety, and the environment, and will assist DTSC in its ability to obtain recorded land use covenants when contamination is left in place at federally-owned properties. It will also ensure that federal property transfers are executed quickly so these properties can be redeveloped. Redevelopment is viewed by local governments as smart growth, as a valuable economic development tool for creating new jobs, not only for on-site project construction, but also as new sources of revenue that are vital to the local economy.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

The proposed regulations are a project under the California Environmental Quality Act (CEQA). However, they are eligible for an exemption under title 14, section 15061(b)(3), since it can be seen with certainty that there is no possibility that the rulemaking may have a significant environmental effect. These regulations will not result in potential for significant environmental impacts because they only enunciate the process for restricting contaminated properties and do not set the criteria for site cleanups or determine the levels of contaminants left in place. Therefore, these regulations will not result directly or indirectly in possible adverse physical changes to the environment. The use of institutional controls, including land use covenants, as part of a site remediation or facility closure is a well established practice under State and federal law. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

BUSINESS REPORT

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has

made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: DTSC has made a preliminary determination that the proposed regulations will have no impact on State revenue or costs. The proposed regulation will ensure that DTSC is reimbursed for its costs associated with the administration of land use controls at sites under the Act (Assembly Bill 389).

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on federal revenue or costs.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

(A) **Creation or elimination of jobs within California** — DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.

(B) **Creation of new businesses or the elimination of existing businesses within California** — DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.

(C) **Expansion of businesses currently doing business in California** — DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses:

DTSC has determined that provisions of this rulemaking will not have a significant adverse economic impact on small businesses. These regulations are intended to amend DTSC's existing regulations for re-

quiring land use covenants to be recorded when contamination is left in place. The regulation imposes no new net costs on businesses which may choose to pay the costs of recording a land use covenant based on a variety of factors, such as the cleanup to unrestricted uses may not be the best option due to the extent and nature of contamination, high costs of cleanup, planned use of the property, or technical infeasibility.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS
AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Laura Hayashi of DTSC's Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Laura Hayashi at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Ms. Kathleen Hartshorne of DTSC's Site Mitigation and Brownfields Reuse Program at (916) 323-3395 or, if unavailable, Ms. Cathleen Urbina of DTSC's Site Mitigation and Brownfields Reuse Program at (916) 324-5790. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc/> and subscribe to the applicable Listserv. You may also leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries and requests for documents by mail, e-mail or fax to:

Laura Hayashi
Regulations Section
Department of Toxic Substances
Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 324-1808

Laura Hayashi's phone number is (916) 322-6409. If Ms. Hayashi is unavailable, please call Ms. Nicole Sotak at (916) 327-4508.

**TITLE MPP. DEPARTMENT OF
SOCIAL SERVICES**

ORD #0806-05

**NOTICE OF PROPOSED CHANGES IN
REGULATIONS OF THE CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES (CDSS)**

**ITEM #1 Expedited Service Benefit Issuance
for the Food Stamp Program**

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held June 13, 2007, as follows:

June 13, 2007

Office Building # 9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on June 13, 2007.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures Division 63 (Food Stamp Regulations), Chapter 63–300 (Application Process), Section 63–301 (Application Processing Time Standards)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides for the Food Stamp Program (FSP), under which each county distributes food stamp benefits to eligible households. The FSP is designed to promote the general welfare, and safeguard the health and well-being of the nation's population raising the levels of nutrition among low-income households. Therefore, it is necessary that the California Department of Social Services (CDSS) be in compliance with state and federal regulations to ensure the continued service to these households.

Currently, the state regulations at Manual of Policies and Procedures Section 63–301.546 specify that when an application for food stamp benefits is received after the 15th of the month and a household is determined to be entitled to Expedited Services and verification is postponed, the county welfare department (CWD) shall issue the second month's benefits within five working days from receipt of the verification or the first day of the second calendar month, whichever is later.

State regulations are in conflict with federal regulations at 7 CFR 273.2(i)(4)(iii)(C) that specify "When a household is entitled to expedited services and applies after the 15th of the month and verification is postponed, the household must be given the first and second allotment on an expedited basis." Therefore, CDSS is not in compliance with current federal regulations and the regulation changes are necessary to adhere to state law.

Additionally, it will be necessary to add language in the form of a handbook example to instruct the CWD how to proceed when the verification is received within the allotted timeframe.

COST ESTIMATE

1. Costs or Savings to State Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
2. Costs to Local Agencies or School Districts: None.

3. Nondiscretionary Costs or Savings to Local Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
4. Federal Funding to State Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.

LOCAL MANDATE STATEMENT

These regulations impose a mandate upon county welfare departments. However, there are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 of the Government Code because the costs are mandated by the federal government.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10554, 11265.1, .2, and .3, 18904, and 18910, Welfare and Institutions Code. Subject regulations implement and make specific 7 CFR 273.2(i)(4)(iii)(C) and (D).

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Robin Garvey (916) 657-2586
Backup: Shirley Trice (916) 657-2586

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice For Publication April 27, 2007 PROPOSED RESEARCH ON FULLY PROTECTED SPECIES

Conducting Disease Investigations on the Ringtail ("Ring-tailed cat") (*Bassariscus astutus*)

The Department of Fish and Game ("Department") received a proposal from Mr. Mourad W. Gabriel and Ms. Greta M. Wengert, requesting authorization to take the ringtail ("Ring-tailed cat") (*Bassariscus astutus*), a Fully Protected Mammal, for research purposes, consistent with the protection and recovery of the species. Both researchers have experience in trapping and handling ringtails from past work and training. The researchers operate the Integral Ecology Research Center out of Davis, California.

Both researchers have applied for a required Scientific Collecting Permit (SCP) to take ringtails in order to study aspects of their life history, diseases, and ecological relationships to other carnivores. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The proposed activities include the following, to be conducted from 2007–2011: 1) Capture ringtails via baited tomahawk cage traps equipped with a wooden cubby box at the rear to provide protection and cover for the animal; 2) Short-term tranquilization by direct intramuscular injection; 3) Brief physical exam including measurement of standard body dimensions and evaluation of dentition to determine age-class; 4) Remove first upper premolar for aging; 5) Insert subcutaneous Passive Integrated Transponder (dorsal medial) for unique identification; 6) Attachment of ear tags with individual color-marked identification; 7) Fecal scoops for endoparasite analysis; 8) Collection of ectoparasites; and 9) Collection of a blood sample from the femoral vein. After processing and recovery, the ringtails will be released unharmed at the live capture site. They may also be recaptured in order to gather additional data for seasonal influence of diseases. Animals recaptured will be released unharmed at the capture site after processing and recovery. The Department may authorize minor amendments or additions to the activities noted above via the SCP amendment process and subsequent conditioning of the permit to protect and conserve ringtails.

The research will occur statewide in California and will continue through 2011.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) or letter permit that would authorize the applicants, as Principal Investigators, to carry out the proposed activities. This MOU/permit would be similar to previous MOUs entered into between other ringtail researchers and the Department.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Mammals after 30 days notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected Mammals, it would issue the authorization on or after May 28, 2007, for a term of four years. Contact: Department of Fish and Game, Wildlife Branch, 1812 Ninth Street, Sacramento, CA 95814, Attn: Esther Burkett.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game
Public Interest Notice for Publication on
April 27, 2007
PROPOSED RESEARCH ON A
FULLY-PROTECTED SPECIES:
Taking the Yuma Clapper Rail

The Department of Fish and Game (Department) is evaluating a proposal received from Dr. John Takekawa, on behalf of the Western Ecological Research Center, U. S. Geological Survey, Sacramento, California, for authorization to take, for research purposes and consistent with conservation and recovery of the species, the Yuma clapper rail (*Rallus longirostris yumanensis*) (rail) in California. The rail is a Fully Protected species of bird. The proposed initial activity consists of the following: 1) searching for vocalizing individuals of the rail, employing broadcasts of recorded, species-specific vocalizations, to determine distribution and status of local populations through interpreting calls received from marsh birds responding to the broadcast; 2) capturing and marking rails; and 3) obtaining blood, feather, and diet samples from captured rails.

For the purpose of allowing take of birds which are native to California, the Department would require that each person employed by, or associated with, the Western Ecological Research Center for field work on the rail obtain an appropriate State scientific collecting permit (SCP) to take birds, prior to beginning work. SCP conditions require that the holder of this permit obtain additional, special authorization from the Department for research on Fully Protected species. The Department would provide the special authorization to take the rail to the Western Ecological Research Center through specific written conditions in a Memorandum of Understanding or other type of special permit.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of a Fully Protected species of bird after a notice of 30 days has been provided to affected and interested parties through publication of a notice in the California Regulatory Notice Register. If the Department determines that the research proposed by Dr. Takekawa is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, the Department would issue the authorization on or after May 28, 2007, for an initial term not to exceed five years. For further information, contact Dr. John Gustafson, Nongame Unit, Wildlife Branch, Department of Fish and Game, 1416 Ninth Street, 12th Floor, Sacramento, California 95814, telephone (916) 327-8847.

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

NOTICE TO INTERESTED PARTIES

DTSC SEEKS JUDICIAL APPROVAL OF
SETTLEMENT AGREEMENT WITH MR.
MOHAMMAD VIRANI
REGARDING THE HARD CHROME
PRODUCTS SITE
LOCATED AT 617 EAST 56th STREET, LOS
ANGELES, CALIFORNIA

The Department of Toxic Substances Control ("DTSC") has agreed to enter into a Consent Decree with Mohammad Virani ("Mr. Virani") regarding the Hard Chrome Products Site ("Site") located at 617 East 56th Street in the City of Los Angeles.

Site History. From 1943 until 1991, electroplating operations were conducted on the Site. As part of these operations, a drainage sump, a surface drain, and an earthen containment trench were used for disposal of liquid wastes and sludges containing chromium, hexavalent chromium and lead. DTSC alleges that plating operations at the Site resulted in releases of hazardous substances at the Site. The soil and groundwater beneath the Site are contaminated with elevated levels of chromium, hexavalent chromium, and trichloroethylene ("TCE").

Enforcement Activities and Cleanup Work Completed by DTSC. In March 1997, DTSC issued an Imminent and Substantial Endangerment Order ("I&SE Order") requiring the Hard Chrome responsible parties ("RPs"), including Mr. Virani, to prepare a Remedial Investigation/Feasibility Study ("RI/FS"). The RPs did not comply with the I&SE Order. DTSC requested the current property owner and other RPs to conduct an RI/FS; however, they claimed they did not have the funds necessary to complete the RI/FS and conduct a satisfactory cleanup. In 2002, DTSC obtained State funds to complete the RI/FS and Baseline Human Health Risk Assessment for the Site. Additionally, State funding was obtained in 2003 to complete the RI, a Treatability Study, and a Remedial Action Plan ("RAP") for the Site.

The Complaint. DTSC filed a complaint pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq., against several defendants, including

Mr. Virani, *California Department of Toxic Substances Control, et al. v. Isaacson, et al.*, U.S.D.C., Central District of Cal., Case No. CV 04–2145 DSF (VBKx). The Complaint alleges that the defendants, as current or former owners or operators of the Site, are liable for DTSC’s past and future response costs incurred to investigate and clean up releases of hazardous substances at the Site.

The Consent Decree. The Consent Decree requires Mr. Virani to pay DTSC \$75,000, which represents a portion of the past costs that DTSC has incurred at the Site. In return, Mr. Virani receives contribution protection as provided by federal law from certain claims by other liable parties and a covenant not to sue from DTSC. Mr. Virani does not admit liability. DTSC reserves a number of rights, including, *inter alia*, the right to seek recovery of its unpaid past and future costs from third parties.

Entry of the Consent Decree. DTSC intends to lodge the Consent Decree with the United States District Court for the Central District of California. After a 30–day public comment period and after DTSC responds to any comments received, DTSC intends to move for judicial approval of the Consent Decree, pursuant to CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2).

Obtaining Copies of the Consent Decree. Interested parties may obtain a copy of the Consent Decree by contacting Mr. Tedd Yargeau at (818) 551–2864.

Comments on the Consent Decree. DTSC invites any interested persons to submit comments on the Consent Decree. Comments must be **received by DTSC on or before May 28, 2007**. The comments should reference the Site name and be directed to:

Mr. Tedd Yargeau
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

DTSC’s responses to timely comments will be available for inspection at DTSC’s office in Glendale, California.

Further information regarding this matter may be obtained by contacting any of the following persons: Deputy Attorney General Sarah Morrison at (213) 897–2640, or DTSC Staff Counsel Robert Elliott at (916) 327–6105.

OAL REGULATORY DETERMINATIONS

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS

(Pursuant to Government Code Section 11340.5 and

Title 1, section 270, of the California Code of Regulations)

OFFICE OF ADMINISTRATIVE LAW

2007 OAL DETERMINATION No. 6
(OAL FILE # CTU 06–0927–01)

REQUESTED BY:	INDEPENDENT BROKERS AND AGENTS OF THE WEST
AGENCY:	DEPARTMENT OF INSURANCE
CONCERNING:	DECLARATION OF A SETTLEMENT AGREEMENT WITH AMERICAN RELIABLE INSURANCE COMPANY AS A PRECEDENT DECISION
	DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the issue of whether the challenged rule is an “underground regulation” pursuant to Government Code section 11340.5¹ and Title 1, California Code of Regulations, section 250, and must, therefore be adopted pursuant to the Administrative

¹ Unless otherwise specified, all references are to the California Government Code.

Procedure Act (APA). OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

OAL must determine whether the designation by the Department of Insurance (Department) of the Decision and Order in the Matter of American Reliable Insurance Company (Decision and Order) as a precedent decision pursuant to Government Code section 11425.60, subdivision (b), creates an underground regulation. The sole issue is the possible creation of an underground regulation. The content of the Decision and Order and the Decision Designating a Precedent Decision (Order) are not within the scope of our review, except as they might result in an underground regulation.

DETERMINATION

OAL determines that the effect of the Order by the Department designating its Decision and Order in the Matter of American Reliable Insurance Company as a precedent decision pursuant to Government Code section 11425.60(b) is to create an underground regulation.

FACTUAL BACKGROUND

On May 9, 2006, the Department served a "Notice of Noncompliance and Order to Show Cause" on the American Reliable Insurance Company (American Reliable). On June 30, 2006, the Department and American Reliable entered into a "Special Notice of Defense" (settlement agreement). This Special Notice of Defense resolved the issues raised by the Order to Show Cause. It stated that the "...attached Decision and Order will be issued by the Commissioner without the taking of proof and without a hearing or further adjudication of any question of fact or law."² American Reliable "waiv[ed] its right to attempt to set aside or vacate any provision of [the] Special Notice of Defense or the Decision and Order to be issued pursuant thereto, including by petition for any form of judicial administrative review on any grounds whatsoever."³

This settlement between the Department and American Reliable was based upon the conclusion by the Department that Cabrillo General Insurance Agency, Inc. and Superior Access Insurance Services had acted as

American Reliable's agents pursuant to the definition of "insurance agent" in Insurance Code sections 31 and 1621.⁴

The Department declared the Decision and Order to be a precedent decision. The Decision and Order states:

The word "producer" is an industry term of art that refers to both insurance agents and insurance brokers. Insurance agents and insurance brokers both transact insurance by soliciting, negotiating, and/or executing insurance contracts. However insurance agents (as defined in sections 31 and 1621 [of the Insurance Code]) differ from insurance brokers (as defined in sections 33 and 1623) [of the Insurance Code]. ... Whether a producer is an agent or broker depends on the nature of the producer's relationship with the insurance company with which the producer places a particular client.

Under section 1731 [of the Insurance Code], a producer acts as an insurance agent in a particular transaction when it is appointed as an agent of an insurer pursuant to section 1704 [of the Insurance Code]. A producer also acts as an insurance agent in a particular transaction when it should be appointed as an agent, even if it is not appointed. A producer should be appointed as an agent of an insurer if the producer would be deemed an agent of that insurer under common law, i.e., if the producer represents or acts on behalf of an insurer, *inter alia*, ...

The Notice of Noncompliance and Order to Show Cause contained a list of factors that the Department used to distinguish between an insurance agent and an insurance broker. The Decision and Order repeated these factors verbatim. The list states that "[a] producer represents or acts on behalf of an insurer, *inter alia*, whenever..."

- the insurer has given the producer discretion to issue insurance binders;
- the insurer has obtained the producer's express or tacit agreement to apply specific underwriting or rating factors before submitting applications to the insurer;
- the insurer has directed or controlled the producer in any respect or reserved the right to do so;
- the insurer has permitted the producer to display the insurer's name or logo on the producer's signage, stationery or business cards in a manner that implies ostensible agency;
- the insurer refers potential or existing insureds to the producer;

² Special Notice of Defense, File No.: DISP 06091926, Paragraph.

³ Special Notice of Defense, File No.: DISP 06091926, Paragraph 4.

⁴ In the Matter of American Reliable Insurance Company, Notice of Noncompliance Pursuant to California Insurance Code Section 1858.1, File No. DISP 06091926.

- the insurer refers the producer to potential or existing insured;
- the insurer attempts to control the licensee's conduct by disciplining the licensee (other than by terminating), or maintaining the right to discipline him, for failing to follow the insurer's rules or for failing to meet production standards;
- the insurer provides the same or substantially similar training to supposed brokers as to any appointed agents;
- the relationship between the producer and the insurer is functionally indistinguishable from the relationship between the insurer and its appointed agents;
- the producer has placed the insurer's interests above that of the insured and the insurer has accepted the benefits thereof; or
- the insurer has incentivized the producer to act upon the insurer's behalf by promising to provide compensation contingent upon the producer meeting a premium volume threshold, loss ratio, or level of profitability.⁵

On June 30, 2006, the same day that the Special Notice of Defense and the Decision and Order were issued, the Department issued an "Order Designating Decision as Precedential", which stated that the "American Reliable Decision and Order is hereby designated as a precedential decision pursuant to California Government Code Section 11425.60, subdivision (b), effective immediately."

It is this Order that the petitioner challenges as creating an underground regulation.

PETITIONER'S ARGUMENT

Petitioner is a trade association representing independent insurance agents and insurance brokers in California, Oregon, Washington and Alaska. The Petitioner:

seeks a determination, under California Government Code § 11340.5 and California Administrative Code Title 1, § 260(a), that the Department may not 'issue, utilize, enforce, or attempt to enforce,' the American Reliable order or any other order purporting to confer precedential status on a 'decision' reached by way of a settlement agreement, a 'Special Notice of Defense,' or any equivalent document or procedure. (Emphasis added.)

The petitioner also argues that the Decision and Order in American Reliable does not fall under any express exemption from the APA. Specifically, the Petitioner argues that the exemption cited by the Department, sec-

tion 11425.60(b), which states that the designation of a decision or part of a decision as a precedent decision is not a rulemaking and need not be done under Chapter 3.5 (commencing with 11340), does not apply to settlement-type decisions. The Petitioner argues that section 11425.60 applies only to adjudicative decisions that emerge from an adversarial hearing in which the decision-maker is exposed to differing viewpoints about the facts and the applicable laws and then renders a decision based on his factual and legal findings.

DEPARTMENT'S RESPONSE

The Department sent OAL a letter setting forth its arguments against accepting the petition. After OAL accepted the petition, at the request of the Department this letter was incorporated as the Department's Response to the petition. The Department's position is that:

- Government Code section 11425.60(b) is unambiguous and OAL may not construe a facially unambiguous statute;
- Government Code section 11425.60(b) exempts all precedent decisions from the APA, not merely precedent decisions that lack one or more stipulations of fact or law, ("expressio unis (sic) est exclusio alterius" theory);
- even if Government Code section 11425.60(b) were ambiguous, it is permissible for decisions based on stipulations to be designated as precedent;
- if section 11425.60 is ambiguous, that ambiguity can be and should be addressed by the Legislature rather than by OAL;
- petitioner's policy arguments against precedent decision following settlement may not be considered; and
- OAL should not "meddle" in another agency's precedent decisions.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states, in part:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

⁵ Decision and Order, page 4.

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation. “Underground regulation” is defined in Title 1, California Code of Regulations, section 250, as follows:

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

OAL is empowered to issue its determination as to whether or not an agency employs an underground regulation pursuant to section 11340.5 subdivision (b). An OAL determination that an agency is using an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference”⁶ in any subsequent litigation of the issue.

ANALYSIS

To determine that an agency is in violation of section 11340.5, it must be demonstrated that the alleged underground regulation is a regulation as defined by section 11342.600, that it has not been adopted pursuant to the APA, and that it is not subject to an express statutory exemption from the APA.

A regulation is defined in section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western Inc. v. Victoria Bradshaw*, (1996)14 Cal. 4th 557, 571, [59 Cal.Rptr.2d 186] the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law

enforced or administered by the agency, or govern the agency’s procedure (Gov. Code § 11342 subd. (g).)

First element of *Tidewater*

The first element of a regulation identified in *Tidewater* is whether the rule applies generally. For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order.⁷

In this case, the Department has declared its settlement decision to be a precedent decision. Pursuant to section 11425.60, a decision “may not be expressly relied upon as precedent unless it is designated as a precedent decision by the agency.” By declaring the settlement decision to be precedent, the Department has expressly stated its intention to expand the effect of the settlement beyond American Reliable and apply the decision to others in similar circumstances.

If the challenge were to the Decision and Order itself, it would not meet the *Tidewater* requirement for a “standard of general application” because a settlement between the Department and American Reliable is not a “. . . rule, regulation, order, or standard of general application. . . .” It is the act of declaring that settlement a precedent decision that transforms it into a standard of general application. The Order Designating Decision as Precedent thereby functionally incorporates the Decision and Order by reference and changes it from being a compromise between two parties into a “. . . rule, regulation, order, or standard of general application.” Viewed separately neither the Decision and Order nor the one sentence Order Designating Decision is a regulation, but together the effect is synergistic.

The first element of *Tidewater*, therefore, has been met.

Second element of *Tidewater*

The second element of *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

The Department of Insurance is an independent department headed by the Insurance Commissioner (Commissioner), an elected official.⁸ The Commissioner “. . . shall perform all duties imposed upon him or her by the provisions of [the Insurance Code] and other laws regulating the business of insurance in [Califor-

⁶ Grier v. Kizer (1990) 219 Cal.App.3d 422, 268 Cal.1.Rptr. 244.

⁷ Roth v. Department of Veteran Affairs (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class.).

⁸ Insurance Code section 12900.

nia], and shall enforce the execution of those provisions and laws.”⁹

The Department’s Decision and Order reiterates the factors listed above in Factual Background, which distinguish between an agent and a broker. We find that these factors implement, interpret or make specific those sections of the Insurance Code enforced or administered by the Department.

The second element of *Tidewater*, therefore, has been met.

Exemptions From The APA

Generally, all regulations adopted by state agencies are required to be adopted pursuant to the APA, unless expressly exempted by statute.¹⁰ In *United Systems of Arkansas v. Stamison* (1998) 63 Cal.App.4th 1001, 1010 [74 Cal.Rptr.2d 407, 411–12] review denied, the California Court of Appeal rejected an argument by the Director of the Department of General Services that language in the Public Contract Code had the effect of exempting rules governing bid protests from the APA.

According to *Stamison*:

When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language. (See, e.g., Gov. Code, section 16487 [‘The State Controller may establish procedures for the purpose of carrying out the purposes set forth in Section 16485. These procedures are exempt from the Administrative Procedure Act.’]; Gov. Code, section 18211 [‘Regulations adopted by the State Personnel Board are exempt from the Administrative Procedure Act’]; Labor Code, section 1185 [orders of Industrial Welfare Commission ‘expressly exempted’ from the APA].) [Emphasis added.]¹¹

The Department argues that its designation of the *American Reliable* Decision and Order is exempt from the requirements of the APA pursuant to Government Code section 11425.60, subdivision (b), which states:

(b). . . Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340).

Section 11425.60, which establishes an express exemption from the APA, is found in Chapter 4.5, Article 6, entitled Administrative Adjudication Bill of Rights. The Department argues that this exemption is unambiguous on its face and cannot be construed by OAL. The Department’s position is that the statute refers to a “decision or part of a decision” and that is the end of the matter. However, the discussion of ambiguity is not limited

to one code section in isolation. Ambiguity may arise in the interaction of various code sections in the Administrative Adjudication provisions of the APA as well as with the Administrative Regulations and Rule-making portions of the APA. In *Henning v. Division of Occupational Safety and Health* (1990) 219 Cal.App.3d 747, 763 [268 Cal.Rptr. 476, 485] the Third District Court examined this issue in depth as they explained that:

...courts are especially reluctant to find an implied repeal of statutes that serve an important public purpose. (*Western Oil and Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.*, supra, 49 Cal.3d 408, 419, 261 Cal.Rptr. 384, 777 P.2d 157.)

The court continued by quoting Sutherland on statutory construction:

...[l]egislation never is written on a clean slate, nor is it ever read in isolation or applied in a vacuum. Every new act takes its place as a component of an extensive and elaborate system of written laws. ‘(2A Sutherland, Statutory Construction (4th ed. 1984 rev.) Section 53.01 p. 549.) In such a legal system, harmony and consistency are positive values ‘because they serve the interests of impartiality and minimize arbitrariness. Construing statutes by reference to others advances those values. In fact, courts have been said to be under a duty to construe statutes harmoniously where that can reasonably be done.’ (*Op. cit. supra*, at pp. 549–550.) It follows that the principle that related statutes should be construed harmoniously ‘is a restatement of the presumption against the implied repeal of statutes’ (*Op. cit. supra*, section 51.01, p. 451.) If found to be in irreconcilable conflict, only the most recent statute can survive and the earlier one is deemed to have been repealed by implication. (*Estate of McGee* (1908) 154 Cal. 204, 207, 97 P.299.) The rule of harmony then is designed to avert such an implied repeal. But its office is not to treat words of one statute as if they were useless surplusage. Thus, “[w]ords must be construed in context, and statutes must be harmonized both internally and with each other, to the extent possible. Interpretative construction which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided. (*California Mfrs. Assn. V. Public Utilities Com.* (1979) 24 Cal.3d 836, 844, 157 Cal.Rptr. 676, 598 P.2d 836, citations omitted)”

OAL has the authority to determine if a challenged rule is an underground regulation and statutory analysis is a requisite part of that process. OAL must therefore examine whether the exemption in section 11425.60(b)

⁹ Insurance Code section 12129.

¹⁰ Government Code section 11346.

¹¹ 63 Cal.App.4th at 1010, 74 Cal.Rptr.2d at 411.

can be read harmoniously together with other applicable statutes to include a non-adjudicative decision, such as the *American Reliable* Decision and Order, within the scope of a precedent decision. The Department's arguments that OAL should not "meddle" in another agency's precedent decisions and that if section 11425.60 is ambiguous, that ambiguity can be and should be addressed by the Legislature rather than by OAL, would preclude all agencies from ever determining if statutory language is ambiguous. If an ambiguity exists then legislative intent is considered "...and the purposes sought to be achieved and evils to be eliminated may have an important place in ascertaining legislative intent. . ."¹² OAL is not "meddling" when it is fulfilling its statutory duties.

Ambiguity

In *People v. Superior Court of San Joaquin County Respondent; Jose Francisco Zamudio, Real Party in Interest* (2000) 23 Cal.4th 183, 192–193 [96 Cal.Rptr. 2d 463] (referred to hereafter as *Zamudio*), the California Supreme Court set forth the following analytical framework:

... Initially, '[a]s in any case of statutory interpretation, our task is to determine afresh the intent of the Legislature by construing in context the language of the statute.' (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159, 278 Cal.Rptr. 614, 805 P.2d 873) In determining such intent, we begin with the language of the statute itself. (*Royo v. Kliger* (1990) 52 Cal.3d 65, 73, 276 Cal. Rptr. 130, 801 P.2d 373.) That is, we look first to the words the Legislature used, giving them their usual and ordinary meaning. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 90, 260 Cal.Rptr. 520, 776 P.2d 222.) 'If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what is said, and the plain meaning of the language governs.' *Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268, 36 Cal.Rptr.2d 563, 885 P.2d 976.) But when the statutory language is ambiguous, 'the court may examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes.' (*Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 724, 80 Cal.Rptr.2d 506, 968 P.2d 65.)

In *Paleski v. State Department of Health Services* (2006) 144 Cal.App.4th 713, 51 [Cal.Rptr.3d 28, 06] the Second District Court of Appeal further explained the plain meaning rule:

... However, the 'plain meaning rule does not prohibit a court from determining whether the

literal meaning of a statute comports with its purpose. . . . If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. . . . 'We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences. . . . The legislative purpose will not be sacrificed to a literal construction of any part of the statute. . . .' (*Bodell Construction Co. v. Trustees of Cal. State University* (1998) 62 Cal.App.4th 1508, 1515–1516, citations omitted.)

Therefore, the first step in the discussion of ambiguity is to examine the language of the relevant statutes. Chapter 4.5, Article 6, entitled Administrative Adjudication Bill of Rights, section 11425.60, which is captioned "Precedent; designation; index", declares that:

(a) *A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.*

(b) *An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340).* An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review. . . . (Emphasis added.)

The Department's response to the petition, dated October 25, 2006, asserts that the language of section 11425.60 ("precedent decision") does not exclude a "decision by settlement" and therefore "...one must apply the doctrine of *expressio unius (sic) est exclusio alterius*." *Black's Law Dictionary*, 7th Edition, page 602, states this doctrine is "[a] canon of construction holding to express or include one thing implies the exclusion of the other, or of the alternative. . . ." In *People v. Saunders* (*supra*), however, the Fifth District Court of Appeal explained that the rule of *expressio unius est exclusio alterius* is "subordinate to the primary rule that legislative intent governs interpretation of a statute." (*In re Joseph B.* (1983) 34 Cal.3d 952, 957, 196 Cal.Rptr. 348, 671 P.2d.852.) "Statutory language may be ambiguous on its face or it may "...have a latent ambiguity such that it does not provide a definitive answer." (*Casterson v. Superior Court of Santa Cruz County* (2002) 101 Cal.App. 4th 177, 187 [123 Cal.Rptr. 2d 637])

¹² *Bethlehem Pacific Coast Steel Corporation v. Franchise Tax Board* (1962) 203 Cal.App.2d 458, 463, 21 Cal.Rptr 707, 710.

Therefore the fact that section 11425.60 does not exclude non-adjudicative decisions is not dispositive, and the question remains: What “decisions” qualify to be precedent decisions?

The statute which authorizes a decision by settlement is contained in Chapter 4.5, Article 4, Governing Procedure, section 11415.60, titled Decision by Settlement and provides in subdivision (a) that:

An agency *may formulate and issue a decision by settlement pursuant to an agreement of the parties, without conducting an adjudicative proceeding*. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiation is admissible to provide liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency. (Emphasis added.)

The statutes governing adjudicative decisions are contained in Chapter 4.5, Article 6, entitled Administrative Adjudication Bill of Rights. Section 11425.10 requires:

(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

....

(6) The decision shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision as provided in Section 11425.50.

(7) A decision may not be relied on as a precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.

....

Section 11425.50 requires:

(a) The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

....

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The

presiding officer’s experience, technical competence, and specialized knowledge may be used in evaluating evidence.

As noted above, the authorization to issue a decision by settlement is contained in Chapter 4.5, Article 4, Governing Procedure. The sections setting forth requirements for adjudicative proceedings and the APA exemption for precedent decisions are both found in Article 6, Administrative Adjudication Bill of Rights. We find it significant that section 11425.50 requires “the decision shall be in writing and shall include a statement of the factual and legal basis for the decision. . . . The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding. . . .”, all of which are elements not contained in a non-adjudicative settlement. There is no record or proceeding in a non-adjudicative settlement. An ambiguity exists as to whether a “decision by settlement” comes within the meaning of a “decision” in section 11425.60.

Statutory language can also be examined for ambiguity by following the analysis contained in *Zabetian v. Medical Board of California* (2000) 80 Cal.App.4th 462, 467 [94 Cal.Rptr.2d 917]. The Third District Court of Appeal explained:

When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it.” (*People v. Overstreet* 1986) 42 Cal.3d 891, 895, 231 Cal.Rptr. 213, 726 P.2d 1288.) Whether that is the case can be determined only when the language is sought to be applied to the case at hand. Each party will normally advance a candidate meaning of consequence to the party’s position. *If it cannot be determined from the language of the statute which is the correct application, extrinsic aids may be employed bearing on the objects to be achieved, the evils to be remedied, and the legislative history of the enactment.* (*Long Beach Police Officers Assn. City of Long Beach* (1988) 46 Cal.3d 736, 741, 250 Cal.Rptr. 869, 759 P.2d 504.) We call this an inquiry into legislative intent, i.e., an inquiry into the plausible meanings to be ascribed to the language in view of the history and context of the legislation. It does not sanction a judicial construction predicated upon a perceived policy which is not within the semantic constraints of the statutory language. . . . (Emphasis added)

Because of the latent ambiguities OAL finds in the sections quoted above, it is necessary and proper to determine the legislative intent to resolve the meaning of section 11425.60.

Legislative Intent

The California Supreme Court in *Conservatorship of Wendland* (2001) 26 Cal.4th 579, 110 Cal.Rptr.2d 412, 430, stated that “. . .[e]xplanatory comments by a law revision commission are persuasive evidence of the intent of the legislature in subsequently enacting its recommendation into law. (*Brian W. v. Superior Court* (1978) 20 Cal.3d 618, 623, 143 Cal.Rptr. 717, 574 P.2d 788.)” Law Revision Commission Comments are usually a reliable guide to legislative intent. (*In re Bryce C.* (1995) 12 Cal.4th 226, 241, 48 Cal.Rptr.2d 120)

The California Law Revision Commission commented on section 11425.60 (precedent decisions) that “. . . The first sentence of subdivision (b) recognizes the need of agencies to be able to make law and policy through **adjudication as well through rulemaking**. It codifies the practice of a number of agencies to designate important decisions as precedential. . . . Section 11425.60 is intended to encourage agencies to articulate what they are doing **when they make new law or policy in an adjudicative decision**. An agency may not by precedent decision revise or amend an existing regulation or adopt a rule that has no adequate legislative basis.”¹³ (Emphasis added.) Section 11405.20 defines “adjudicative proceeding” as “. . . an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.”

The Law Revision Commission reiterated that “the precedent decision provision recognizes **that agencies make law and policy through administrative adjudication as well as through rulemaking**.”¹⁴ (Emphasis added.)

The Law Revision Commission’s Comments regarding section 11415.60 (Decision by settlement) state that “subdivision (a) of section 11415.60 [decision by settlement] codifies the rule in *Rich Vision Centers, Inc. v. Board of Medical Examiners*, 144 Cal.App.3d 110, 192, Cal.Rptr. 455 (1983).”¹⁵ In the *Rich* case the Second District Court of Appeal identified the issue as whether the Board of Medical Examiners “. . . had the authority to engage in settlement negotiations of pending cases, the resolution of which called for payment of attorneys fees and future investigation costs by litigants.” The court held that “. . . the Board had the implied power to settle licensing disputes.” (*Rich Vision Centers v. Board of Medical Examiners, supra*)

It is interesting to note that the word “decision” appears only once in the *Rich* case as a title: “Pursuant to

the negotiated settlement, the deputy attorney general drafted a ‘*Stipulation and Decision*’ covering the administrative matters and other required documents necessary for the civil proceedings.” (Emphasis added.) The court referred to “negotiated settlement” and “settlement negotiation.” The phrase “decision by settlement” appears nowhere in the case. As the *Rich* court explained:

The ability to negotiate favorable settlement terms has long been among attorneys most effective tools for promoting their clients best interests. To successfully use this tool however, an attorney must have flexibility in formulating the terms and conditions of any agreement to maximize benefit to the client. **Settlement negotiations involve give and take, and the final agreement is a compromise**. Government attorneys no less than attorneys in the private sector are responsible for promoting their clients best interests. (See *People ex rel. Deukmejian v. Brown* (1981) 29 Cal.3d 150, 157, 172 Cal.Rptr. 478, 624 P.2d 1206.) There is no reason to handicap those members of the Attorney General staff **who represent licensing agencies** in performing their duty by limiting their ability to propose and include any settlement term beneficial to the public. (Emphasis added.)

Because section 11415.60 codifies the *Rich* holding, which characterizes final settlement agreements as a “compromise” — a nonadjudicative proceeding, it is clear the Legislature did not envision such decisions would be governed by the procedures and protections that apply to adjudicative proceedings found in section 11425.10. Section 11425.10 was enacted at the same time section 11415.60 was enacted (Stats. 1995, c. 938, sec. 21). Section 11415.60 specifically states that adjudicative proceedings are not conducted. Furthermore, it is only the decisions that result from adjudicatory proceedings conducted pursuant to the governing procedures of section 11425.10 that the Legislature intended to be allowed to be designated a “precedent decision.”

Further evidence of Legislative intent can be found in the organization of Chapter 4.5. The provisions discussing decisions by settlement in section 11415.60 are found in Chapter 4.5, Article 4, Governing Procedure. However, the provision permitting the designation of a precedent decision, section 11425.60, is in Article 6, entitled “Administrative Adjudicative Bill of Rights” (sections 11425.10 through 11425.60). The Bill of Rights contains the minimum due process and public interest requirements for adjudicative hearings subject to Chapter 4.5.

¹³ 25 Cal.L.Rev.Comm.Reports 55, 163 (1995).

¹⁴ 25 Cal.L.Rev.Comm.Reports 55, 103 (1995).

¹⁵ 25 Cal.L.Rev.Comm.Reports 55, 150 (1995).

In *In re Carr* (1998) 65 Cal.App.4th 1525, 1530 [77 Cal.Rptr.2d 500] the Second District Court of Appeal explained that:

... chapter and section headings in statutes may be considered in determining legislative intent. The California Supreme Court has held: “However, it is well established that ‘chapter and sections headings [of an act] may properly be considered in determining legislative intent’ [citation], and are **entitled to considerable weight**. [Citation.] [Citations.]” (Citations omitted) (Emphasis added)

The fact that section 11415.60 authorizing a decision by settlement is in Article 4, Governing Procedures, and section 11425.60, the APA exemption for precedent decisions, is in Article 6, Administrative Adjudication Bill of Rights, supports our conclusion that the Legislature intended to limit the exemption for precedent decisions to adjudicative proceedings.

In addition to the Legislative intent expressed in the Law Revision Commission’s Comments, it is also permissible to examine the purposes of the entire APA. In *Bethlehem Pacific Coast Steel Corporation v. Franchise Tax Board* (1962) 203 Cal.App.2d 458, 463 [21 Cal.Rptr. 707, 710], the Third District Court of Appeal explained that:

One of the many rules laid down in aid of statutory interpretation is that legislative intent should be gathered from the whole Act and reconciled with reasonable application to carry out the policy and purpose of the legislation. (*Select Base Materials v. Board of Equalization*, 51 Cal.2d 640, 335 P.2d 672; *County of Alameda v. Kuchel*, 32 Cal.2d 193, 195 P.2d 17; *Warner v. Kenny*, 27 Cal.2d 627, 165 P.2d 889.)

...

Of course, it is axiomatic that the purposes sought to be achieved and evils to be eliminated may have an important place in ascertaining legislative intent. (*California Drive-In Restaurant Ass’n v. Clark*, 22 Cal.2d 287, 140 P.2d 657, 147 A.L.R. 1028; *Freedland v. Greco*, 45 Cal.2d 462, 289 P.2d 463.)

In *Tidewater* (*supra* at p. 193) the California Supreme Court emphasized the importance of public participation in the rulemaking process.

One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation (*Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204–205, 149 Cal.Rptr. 1, 583 P.2d 744 (*Armistead*)), as well as notice of the law’s requirement so that they can conform their conduct accordingly (*Ligon v. State Personnel Bd.* (1981) 123 Cal.App.3d 583, 588,

176 Cal.Rptr. 717 (*Ligon*)). The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, **public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny**. (See *San Diego Nursery Co. v. Agricultural Labor Relations Bd.* (1979) 100 Cal.App.3d 128, 142–143, 160 Cal.Rptr. 822.) (Emphasis added.)

We also examine the “purposes sought to be achieved and evils to be eliminated”¹⁶ in the adoption of the provisions in Chapter 4.5, Article 6, Administrative Adjudication Bill of Rights. These purposes are described in the Law Revision Commission’s Comments regarding section 11425.60:¹⁷

The proposed law includes an ‘administrative adjudication bill of rights’ that prescribes **fundamental due process and public policy protection for person involved in administrative adjudication by state agencies**. These provisions are described below.

Notice and Opportunity To Be Heard

Notice to the person that is the subject of agency proceeding and an opportunity for the person to be heard are fundamentals of due process of law. The proposed law codifies this principle and makes clear that the opportunity to be heard includes the right of the person to present and rebut evidence. (Emphasis added)

The Comments describe other provisions of the Administrative Adjudication Bill of Rights including the following Comment regarding Precedent Decisions¹⁸.

Precedent Decisions

The proposed law allows an agency to designate a decision as precedential if the decision contains a significant legal or policy determination that is likely to recur. The agency must maintain an index of determinations made in precedent decisions. An agency’s designation of, or failure to designate, a decision as precedential is not judicially reviewable, but a decision that is not designated as precedential may not be cited as precedent.

The precedent decision provision **recognizes that agencies make law and policy through administrative adjudication as well as through rulemaking**. Although agency decisions are

¹⁶ *Bethlehem Pacific Coast Steel Corporation v. Franchise Tax Board*, *supra*

¹⁷ 25 Cal.L.Rev.Comm.Reports 55, 98–99.

¹⁸ 25 Cal.L.Rev.Comm.Reports 55, 103–104.

public records, they are inaccessible to the public except in the case of the few existing agencies that publish their decision or designate precedent decisions.

Extension of the precedent decision requirement to all agencies would make the decisions generally available and would benefit everyone, including counsel for both sides, as well as the presiding officers and agency heads who make the decisions.

It would encourage agencies to articulate what they are doing when they make new law or policy in an administrative adjudication. Additionally, it is more efficient to cite an existing decision than to reconstruct the policy or even decide inconsistently without knowing or acknowledging that this has occurred.

....

(Emphasis added.)

The specific language of the relevant provisions, the placement of the individual sections in the different Articles in Chapter 4.5, and the intent of the Legislature as evidenced by the Law Revision Commission Comments lead us to the conclusion that only decisions that are adjudicatory may be declared precedent.¹⁹

CONCLUSION

As the Law Revision Commission Comments make clear, there are two ways for agencies to make new law or policy: (1) APA rulemaking or (2) administrative adjudication which has been designated a precedent decision. The Department did not employ either method.

If OAL were to sanction the Department's interpretation that a decision by a non-adjudicative settlement reached by compromise between the agency and an individual party can be transformed into a precedent decision, the result would not only create a third rulemaking

method not sanctioned by the Legislature, but would also effectively eviscerate the rulemaking portion of the APA. The most significant purposes of the APA rulemaking process could be circumvented by an agency placing new rules into a non-adjudicative "decision by settlement" and then declaring it a precedent decision. The Department's interpretation would impermissibly allow state agencies to circumvent the rulemaking process with impunity, precluding public participation, avoiding OAL review for substantive and procedural compliance with the APA, and providing no record for a court to review. In our view, such a result would nullify the APA.

By finding that the APA exemption for precedent decisions is limited to decisions reached by administrative adjudication and in compliance with the requirements of sections 11425.50 and 11425.60, OAL's determination harmonizes sections 11405.20, 11415.50 and 11425.60 both internally and also with the rulemaking requirements of the APA. Our determination preserves both the rulemaking and adjudicative portions of the APA, and reconciles the provisions with legislative intent.

For these reasons, OAL determines that the effect of the Order by the Department designating its Decision and Order in the Matter of American Reliable Insurance Company as a precedent decision pursuant to Government Code section 11425.60(b) is to create an underground regulation.

April 16, 2007

/s/

Kathleen Eddy
Senior Counsel

/s/

Linda C. Brown
Deputy Director

Debra M. Cornez

for: Barbara Eckard
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¹⁹ We additionally note that even adjudicative decisions may at times exceed the scope of the APA exemption set forth in section 11425.60. In *Rea v. Worker's Compensation Appeals Board* (2005) 127 Cal.App.4th 625, 647-648 [25 Cal.Rptr. 3d 828], the Second District Court of Appeal analyzed whether procedures contained in an adjudicative decision that had been declared a precedent decision were exempt from the APA or whether they were regulations. The court examined the procedures and determined that the decision had "adopted and announced a whole body of entirely new procedures." The court found that "the definition of regulation under Government Code section 11342.600 is more applicable to the new procedures . . . than the definition of precedent decision under Government Code section 11425.60, subdivision (b)."

Because we find that the Legislature intended section 11425.60 to apply only to adjudicative decisions, there is no need for us to analyze whether the factors in the settlement agreement between the Department and American Reliable are of a scope or nature that might constitute a regulatory scheme comparable to that at issue in *Rea*.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indi-

cated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AGRICULTURAL LABOR RELATIONS BOARD

Ag. Empl. Relief Fund, Chall. Ballot Investigs., Mandatory Mediation

This regulatory action makes a change in the minimum payout from the Agricultural Employee Relief Fund, provides a limitation on evidence heard on appeal to the Board, and clarifies that a determination by a mediators shall be deemed a "report" under the Labor Code 1164.

Title 8

California Code of Regulations

AMEND: 20299, 20363, 20407

Filed 04/18/07

Effective 05/18/07

Agency Contact:

Joseph A. Wender, Jr. (916) 653-4054

AIR RESOURCES BOARD

Off-Road Large Spark-Ignition Engines

These regulations are the latest by the ARB implementing regulations to reduce the public's exposure to hydrocarbon (HC) and nitrogen oxides (NOx) emissions from forklifts and other industrial equipment powered by large spark-ignition (LSI) engines. These regulations establish more stringent emissions standards for manufacturers of new LSI engines, establish more stringent fleet average emission level requirements for LSI fleets with the industrial equipment already in use and establish verification procedures for retrofit emission control systems. Specifically, the regulations adopt the US EPA's emission standards (developed in conjunction with ARB) and implement additional more stringent emission requirements to be phased in over the next several years. Manufacturers of LSI engines for 2007 and later model engines must meet a 2.7 grams per kilowatt-hour (g/kW-hr) HC+NOx emission standard and a 4.4 g/kW-hr carbon monoxide (CO) emission standard. By 2010 and subsequent model year engines must meet a 0.6 g/Kw-hr HC+NOx emission standard and a 15.4 CO emission standard. The regulations establish optional low-emission standards below the 2007 and 2010 mandatory standards. The regulatory package also adopts procedures for manufacturers of retrofit emission control systems to be verified by ARB for use with older models of LSI engines.

Title 13

California Code of Regulations

ADOPT: 2775, 2775.1, 2775.2, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789

AMEND: 2430, 2431, 2433, 2434, 2438

Filed 04/12/07

Effective 05/12/07

Agency Contact: Amy Whiting (916) 322-6533

BOARD OF PAROLE HEARINGS

Sexually Violent Predators — Amendments to 15 CCR Section 2600.1

This emergency filing updates the criteria for imposition of a temporary hold of up to 3 days beyond a prisoner's scheduled release date for determining whether that person may be subject to commitment as a sexually violent predator, and when the screening indicates the prisoner is likely to be a sexually violent predator, the criteria for determining whether good cause exists for a 45 day hold beyond the scheduled release date for referral to the State Department of Mental Health for full evaluation.

Title 15

California Code of Regulations

AMEND: 2600.1

Filed 04/18/07

Effective 04/18/07

Agency Contact: Teresa A. Arcure (916) 322-9424

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Revise CIWMB Household Hazardous Waste Form 303

This action amends household hazardous waste reporting requirements by adopting new forms CIWMB 303a (1/06) and CIWMB 303b (1/06) for annual electronic reporting purposes.

Title 14

California Code of Regulations

ADOPT: 18751.2.1, Form CIWMB 303a, Form CIWMB 303b AMEND: 18751.2 REPEAL: Form CIWMB 303

Filed 04/13/07

Effective 05/13/07

Agency Contact: Elliot Block (916) 255-2821

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Dental

Certificate of Compliance filing making permanent Department of Corrections and Rehabilitation Title 15 regulations filed as an emergency on October 3, 2006 to provide inmate dental care services in state prisons pursuant to a stipulated agreement and court order (Perez v.

Tilton, N.D. Cal., Case No. C-05-5241). Pursuant to the stipulated agreement, the proposed action sets forth responsibilities, limitations, and timeframes for emergency, urgent, interceptive and routine rehabilitative care for California inmates. Amendments also include revisions for enhanced clarity, numerical corrections, changes in punctuation, and department and divisional name changes based on recent legislation.

Title 15

California Code of Regulations

ADOPT: 3352.2 AMEND: 3350.1, 3352.1, 3354, 3355.1, 3358

Filed 04/18/07

Effective 04/18/07

Agency Contact:

Ann Cunningham (916) 358-1959

DEPARTMENT OF HEALTH SERVICES

Vendor Training, Claims, Monitoring and Abbreviated Appeals

The California Women, Infants, and Children, (WIC) Supplemental Nutrition Program is a 100 percent federally funded supplemental nutrition program administered by the Department of Health Services. This regulatory action makes revisions to more closely align California's regulations with the Federal Final Rule, published in the Federal Register Vol. 65, No. 251, on December 29, 2000.

Title 22

California Code of Regulations

ADOPT: 40622, 40635.1, 40635.2, 40648, 40660, 40661, 40733, 40752 AMEND: 40603, 40635, 40743, 40747 REPEAL: 40753

Filed 04/17/07

Effective 05/17/07

Agency Contact: Cathy Ruebusch (916) 440-7841

DEPARTMENT OF HEALTH SERVICES

Reporting HIV Infection by Name

This is the readoption of an emergency action that updates the Department's regulations that specify the HIV test information that must be reported by a health care provider to the local health officer, the reporting forms, and the manner of transmitting a report to conform to the new requirement to include reporting of the patient's name in accordance with Health and Safety Code section 121022. Also readopted is a regulation that adds the requirement that people with access to such records must annually sign a specified "Confidentiality Agreement."

Title 17

California Code of Regulations

ADOPT: 2641.56, 2641.57 AMEND: 2641.30, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77

Filed 04/18/07

Effective 05/09/07

Agency Contact:

Barbara S. Gallaway (916) 657-3197

DEPARTMENT OF INSURANCE

Workers' Compensation Pure Premium Rates

This rulemaking makes changes to the Department Of Insurance's Uniform Statistical Reporting Plan—1995, the Experience Rating Plan—1995, and Miscellaneous Regulations for the Recording and Reporting of Data. These changes are exempt from the Office of Administrative Law's review pursuant to Government Code section 11340.9(g) [establishing or fixing of rates, prices, or tariffs]. They are filed with the Secretary of State and a history note is published in the California Code of Regulations (CCR). The substantive provisions are not published in the CCR but are available from the Workers' Compensation Insurance Rating Bureau of CA.

Authority: Government Code Section 11343.8

Title 10

California Code of Regulations

AMEND: 2318.6, 2353.1, 2354

Filed 04/16/07

Effective 01/01/07

Agency Contact:

Christopher A. Citko (916) 492-3187

DEPARTMENT OF JUSTICE

Surety Bond Form — Seller of Travel Discount Programs

In this "print only" filing, the Department of Justice submits the Secretary of State's surety bond form for a "Seller of Travel Discount Programs."

Title 11

California Code of Regulations

ADOPT: 64.3

Filed 04/18/07

Effective 04/18/07

Agency Contact:

Randall Borcharding (415) 703-5509

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Mandatory Munitions Rule Adoption

Department of Toxic Substances Control (DTSC) proposes revisions to Title 22 hazardous waste regulations as changes without regulatory effect to comply

with federal mandatory—to-adopt requirements related to federal adoption of the Military Munitions Rule (MMR) and related provisions in 62 Federal Register 6621–6657, amended February 12, 1997, at pg. 6648. DTSC authority to adopt non-substantive regulations in order to maintain EPA authorization of its hazardous waste program is provided in of the section 25159.1 Health & Safety Code.

Title 22
California Code of Regulations
ADOPT: 66267.10 AMEND: 66264.1, 66265.1, 66270.1
Filed 04/13/07
Effective
Agency Contact: Nicole Sotak (916) 327–4508

ENVIRONMENTAL PROTECTION AGENCY
Unified Program Administrative Cleanup Regulations

This regulatory action amends and reorganizes provisions and sections within articles 1 through 10 of division 1, subdivision 4, chapter 1, to improve the organizational structure, remove duplications, and clarify existing language. These changes are intended to be administrative in nature and not impose any new reporting requirements for the Unified Program.

Title 27
California Code of Regulations
ADOPT: 15186, 15187, and 15188 AMEND: 15100, 15110, 15120, 15130, 15150, 15160, 15170, 15180, 15185, 15187.1 (renumber to 15189), 15190, 15200, 15210, 15220 (amend and renumbering of 15210(b) to 15220(a)), 15240, 15241, 15250, 15260, 15270, 15280, 15290
Filed 04/13/07
Effective 05/13/07
Agency Contact: Jim Bohon (916) 327–5097

FAIR POLITICAL PRACTICES COMMISSION
Expenditure Recordkeeping — Cancelled Checks

This rulemaking amends title 2, section 18401, to allow copies of cancelled checks if the copy is obtained from the financial institution, in lieu of the actual cancelled check, for purposes of meeting the requirement of maintaining “original source documentation.”

Title 2
California Code of Regulations
AMEND: 18401
Filed 04/16/07
Effective 05/16/07
Agency Contact: Valentina Joyce (916) 322–5783

SUPERINTENDENT OF PUBLIC INSTRUCTION
Alternative Payments

This is the certification of compliance for emergency regulations that clarify the method by which the amounts allowed for administrative and support costs are calculated and the limits to reimbursement for Alternative Payment program contracts. The regulations also define the terms “restricted income” and “unrestricted income” as the terms are used with California Department of Education contracts and clarify how each type of income should be reported.

Title 5
California Code of Regulations
AMEND: 18013, 18054, 18068
Filed 04/17/07
Effective 04/17/07
Agency Contact: Debra Strain (916) 319–0642

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN NOVEMBER 15, 2006 TO
APRIL 18, 2007**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2
04/16/07 AMEND: 18401
04/04/07 AMEND: 28010 REPEAL: 36000
03/27/07 AMEND: 59560
03/20/07 ADOPT: 18746.3
03/15/07 AMEND: div. 8, ch. 102, section 59100
03/14/07 AMEND: div. 8, ch. 73, section 56200
03/01/07 AMEND: 21922
02/28/07 AMEND: 714
02/16/07 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1, 1859.167, 1859.202, 1866
02/02/07 AMEND: 2561, 2563, 2564, 2565, 2566, 2567
01/26/07 ADOPT: 599.550, 599.552, 599.553, 599.554 AMEND: 599.500
01/19/07 ADOPT: 18531.62, 18531.63, 18531.64 AMEND: 18544
01/11/07 AMEND: 1894.4, 1896.12
01/09/07 AMEND: 18707.1
01/09/07 ADOPT: 18534
01/09/07 ADOPT: 18530.3
01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106
12/22/06 AMEND: 21906

12/18/06 ADOPT: 18421.3
 12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
 12/18/06 AMEND: 18312, 18316.5, 18326, 18401, 18521, 18537.1, 18704.5, 18705.5, 18730, 18746.2
 12/18/06 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
 12/18/06 AMEND: 18545
 12/14/06 ADOPT: 18707.10
 12/13/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80

Title 3

04/03/07 AMEND: 3591.20(a), 3591.20(b)
 04/02/07 AMEND: 752, 796.6, 1301
 03/28/07 AMEND: 3591.2(a)
 03/27/07 ADOPT: 1446.9, 1454.16
 03/21/07 ADOPT: 3591.20
 03/15/07 ADOPT: 1371, 1371.1, 1371.2
 03/07/07 AMEND: 3423(b)
 03/06/07 AMEND: 3700(c)
 02/15/07 ADOPT: 499.5, 513, 513.5 AMEND: 498, 499, 500, 501, 502, 504, 505, 509, 510, 511, 512, 512.1, 512.2, 514, 515, 516, 517, 525, 551, 552, 553, 554, 604.1 REPEAL: 499.5, 503, 506, 508, 512.3, 527, 536, 537, 538, 539, 540, 541, 543, 544, 546, 547, 550
 02/14/07 AMEND: 3700(c)
 02/08/07 AMEND: 3433(b)
 02/08/07 AMEND: 6170, 6172, 6200
 02/07/07 AMEND: 6170, 6172, 6200
 01/31/07 AMEND: 3591.12(a)
 01/24/07 AMEND: 3591.13(a)
 01/18/07 AMEND: 3433(b)
 01/18/07 AMEND: 3800.1, 3800.2
 01/18/07 AMEND: 3433(b)
 01/18/07 AMEND: 3423(b)
 01/09/07 AMEND: 3433(b)
 01/08/07 AMEND: 3591.2(a)
 01/08/07 AMEND: 3591.6(a)
 01/05/07 AMEND: 6625
 01/05/07 AMEND: 3433(b)
 01/05/07 AMEND: 3406(b)
 01/03/07 AMEND: 3424(b)
 12/20/06 AMEND: 3423(b)
 12/20/06 AMEND: 3433(b)
 12/19/06 ADOPT: 6310, 6312, 6314 AMEND: 6170

12/06/06 AMEND: 3591.6
 12/06/06 AMEND: 3700(c)
 11/30/06 ADOPT: 6128 AMEND: 6130
 11/16/06 AMEND: 3433(b)

Title 4

03/13/07 ADOPT: 7075, 7076, 7077, 7078, 7079, 7080, 7081, 7082, 7083, 7084, 7085, 7086, 7087, 7088, 7089, 7090, 7091, 7092, 7093, 7094, 7095, 7096, 7097, 7098, 7099 REPEAL: 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007, 7008, 7009, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7017
 02/08/07 ADOPT: 12341
 02/08/07 ADOPT: 12550, 12552, 12554, 12556, 12558, 12560, 12562, 12564, 12566, 12568, 12572
 01/31/07 AMEND: 12590
 01/30/07 AMEND: 12358
 01/30/07 AMEND: 12101, 12301.1, 12309
 01/30/07 ADOPT: 12460, 12461, 12462, 12463, 12464, 12466
 01/26/07 AMEND: 1433
 01/17/07 ADOPT: 523
 01/11/07 AMEND: 1536
 12/05/06 AMEND: 1582
 11/22/06 AMEND: 1544, 1658
 11/16/06 ADOPT: 2422.1

Title 5

04/17/07 AMEND: 18013, 18054, 18068
 04/09/07 ADOPT: 11962, 11962.1
 04/06/07 AMEND: 41301
 03/29/07 AMEND: 42356
 03/19/07 AMEND: 41550
 03/19/07 AMEND: 41301
 03/01/07 AMEND: 19816, 19851, 19852, 19853
 02/28/07 AMEND: 80028, 80487
 02/16/07 ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7
 02/08/07 ADOPT: 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, 1000.6, 1000.7
 01/17/07 ADOPT: 55151, 55151.5 AMEND: 55002, 55150, 58160
 01/17/07 ADOPT: 58707 AMEND: 58704, 58770, 58771, 58773, 58774, 58776, 58777, 58779 REPEAL: 58706, 58775
 01/10/07 AMEND: 55806

Title 8

04/18/07 AMEND: 20299, 20363, 20407
 03/29/07 AMEND: 3664(a)
 03/27/07 AMEND: 3291, 3292, 3295, 3296

03/06/07	AMEND: 1529, 1532, 1532.1, 1535, 5144, 5190, 5198, 5200, 5202, 5207, 5208, 5210, 5211, 5213, 5214, 5217, 5218, 5220, 8358	2644.18, 2644.19, 2644.20, 2644.21, 2644.23, 2646.3, 2646.4, 2648.4
03/02/07	ADOPT: 1731 AMEND: 1730	REPEAL: 2642.4, 2643.2, 2644.9, 2644.11
03/01/07	AMEND: 1541	12/29/06 ADOPT: 5327, 5357.1, 5358, 5358.1 AMEND: 5350, 5352
02/28/07	AMEND: 9789.40	12/29/06 AMEND: 2696.1, 2696.2, 2696.3, 2696.5, 2696.6, 2696.7, 2696.9, 2696.10
02/21/07	AMEND: 9780, 9783	REPEAL: 2696.4, 2696.8
02/15/07	AMEND: 9789.11	12/29/06 AMEND: 2052.1, 2052.4
12/29/06	AMEND: 1598, 1599	12/29/06 AMEND: 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, 2662.5
12/27/06	AMEND: 3385	12/29/06 AMEND: 2632.5(c)
12/21/06	AMEND: 5031	12/29/06 AMEND: 2222.10, 2222.11, 2222.12, 2222.14, 2222.15, 2222.16, 2222.17, 2222.19 REPEAL: 2222.13
12/15/06	AMEND: 5006.1	12/27/06 AMEND: 2498.6
Title 9		12/26/06 ADOPT: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86, 2698.87, 2698.88, 2698.89, 2698.89.1 AMEND: 2698.80, 2698.81, 2698.82, 2698.83, 2698.84, 2698.85, 2698.86
12/29/06	ADOPT: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3405, 3410, 3415, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100 3200.010, 3200.020, 3200.030, 3200.040 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415	12/22/06 ADOPT: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8
11/21/06	AMEND: 9100	12/20/06 ADOPT: 2614, 2614.1, 2614.2, 2614.3, 2614.4, 2614.5, 2614.6, 2614.7, 2614.8, 2614.9, 2614.10, 2614.11, 2614.12, 2614.13, 2614.14, 2614.15, 2614.16, 2614.17, 2614.18, 2614.19, 2614.20, 2614.21, 2614.22, 2614.23, 2614.24, 2614.25, 2614.26, 2614.27
Title 10		12/19/06 AMEND: 2690.90, 2690.91, 2690.92, 2690.93, 2690.94
04/16/07	AMEND: 2318.6, 2353.1, 2354	12/13/06 ADOPT: 2534.40, 2534.41, 2534.42, 2534.43, 2534.44, 2534.45, 2534.46
03/23/07	AMEND: 2695.8(b)(2)	11/15/06 AMEND: 2697.6, 2697.61
03/09/07	AMEND: 2498.6	Title 11
03/06/07	AMEND: 260.230, 260.231, 260.236.1, 260.241.4, 260.242 REPEAL: 260.231.2, 260.236.2	04/18/07 ADOPT: 64.3
01/23/07	ADOPT: 2183, 2183.1, 2183.2, 2183.3, 2183.4 REPEAL: 2691.18, 2691.19	03/06/07 AMEND: 1070, 1082
01/10/07	AMEND: 3528	02/02/07 ADOPT: 999.40
01/08/07	AMEND: 2698.52(c), 2698.53(b), 2698.56(c)	02/02/07 ADOPT: 9070, 9071, 9072, 9073, 9076, 9077, 9078 AMEND: 1005, 1018, 1055 REPEAL: 1011
01/03/07	ADOPT: 2642.4, 2643.8, 2644.24, 2644.25, 2644.26, 2644.27, 2644.50 AMEND: 2642.5, 2642.6, 2642.7, 2643.6, 2644.2, 2644.3, 2644.4, 2644.5, 2644.6, 2644.7, 2644.8, 2644.10, 2644.12, 2644.15, 2644.16, 2644.17,	01/30/07 AMEND: 20
		01/25/07 AMEND: 30.5
		01/25/07 AMEND: 30.1
		01/19/07 AMEND: 1005, 1007, 1080
		12/21/06 AMEND: 1070, 1081, 1082
		12/21/06 ADOPT: 80.3
		12/21/06 AMEND: 48.6
		Title 13
		04/12/07 ADOPT: 2775, 2775.1, 2775.2, 2780, 2781, 2782, 2783, 2784, 2785, 2786,

	2787, 2788, 2789 AMEND: 2430, 2431, 2433, 2434, 2438		8.00, 27.60, 27.65, 27.90, 27.95, 28.20, 29.70, 29.80, 29.85, 195, 701
03/26/07	ADOPT: 182.00, 182.01, 182. 02, Form REG 195 (REV. 2/2007) AMEND: Form REG 256 (REV. 9/2005)	02/23/07	AMEND: 671.5
02/09/07	AMEND: 2702, 2703, 2704, 2706, 2707, 2709	02/16/07	AMEND: 10214, 10381, 10500, 10620, 11002, 11003, 11005
01/18/07	AMEND: 1961, 1976, 1978	02/13/07	AMEND: 53.03, 149, 149.1
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12/06/06	ADOPT: 2022, 2022.1		
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03/20/07	AMEND: 790, 815.01, 815.02, 815.03, 815.04, 815.05, 815.06, 815.07, 815.08, 815.09, 816.01, 816.02, 816.03, 816.04, 816.05, 816.06, 817.02, 817.03, 818.01, 818.02, 818.03, 819.01, 819.02, 819.03, 819.04, 819.06, 819.07, 820.01, 825.03, 825.05, 825.07, 826.01, 826.02, 826.03, 826.04, 826.05, 826.06, 827.01, 827.02		
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04/18/07	AMEND: 2600.1	
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12/26/06 ADOPT: 1433.1 AMEND: 1002, 1016,
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